

CITY OF FRANKLIN
COMMON COUNCIL MEETING
FRANKLIN CITY HALL – COMMON COUNCIL CHAMBERS
9229 WEST LOOMIS ROAD, FRANKLIN, WISCONSIN
AGENDA**

MONDAY, NOVEMBER 5, 2018 AT 6:30 P.M.

- A. Call to Order and Roll Call.
- B.
 - 1. Citizen Comment Period.
 - 2. Mayoral Announcements
 - (a) Announcement of Merger of Milwaukee's Interfaith and SET Merger as UNISON.
 - (b) Letter of Appreciation from the City of Franklin Fire Department to Kristin Anderson for Assisting in Updating and Revising the City's Emergency Operations Plan.
- C. Approval of Minutes of Regular Common Council Meeting of October 16, 2018.
- D. Hearings.
- E. Organizational Business.
- F. Letters and Petitions.
- G. Reports and Recommendations:
 - 1. A Resolution Authorizing Certain Officials to Execute Storm Water Facilities Maintenance Agreements for a North Stormwater Pond, a South Stormwater Pond and a Biofiltration Pond upon Properties Approximately in the area Adjoining Ballpark Drive, South Ballpark Drive and West Loomis Road (Ballpark Commons).
 - 2. A Resolution Authorizing Certain Officials to Execute a Payment in Lieu of Taxes Agreement Between Franklin RE, LLC and the City of Franklin for the Property Located at 7220 Ballpark Drive, Franklin, Wisconsin 53132 (Tax Key No. 754-9007-000) (Ballpark Commons).
 - 3. A Resolution Authorizing Certain Officials to Execute a First Amendment to Tax Incremental District No. 5 Development Agreement Between the City of Franklin and BPC Master Developer, LLC (Developer) (Ballpark Commons).
 - 4. A Resolution Authorizing Certain Officials to Execute a Partial Satisfaction and Release of Mortgage upon the Senior Housing Development Property (Lot 2 of Certified Survey Map No. 9078 Recorded in the Office of the Register of Deeds for Milwaukee County, Wisconsin, on October 16, 2018 as Document No. 10820171, Tax Key No.: 754-9007-000; south of West Rawson Avenue and west of West Loomis Road) (Ballpark Commons).

5. Agreement for Mutual Assistance Among Milwaukee County Fire Departments to Provide for Potentially More Rapid Response Times Within Areas of Adjoining Communities in Milwaukee County.
6. Approval of the Updated Emergency Operations Plan and Designation of an Emergency Manager.
7. An Ordinance to Modify the Municipal Code Section 245-5.F. to add No Parking on School Days During the Times 8:40-9:10 am and 3:40-4:10 pm on Both Sides of S. 35th Street 50 Feet North and South of W. Hilltop Lane Right of Way and also on Both Sides of W. Hilltop Lane 50 Feet West of S. 35th Street Right of Way.
8. A Resolution Authorizing Certain Officials to Execute a Subdivision Development Agreement with the Developer of Ryanwood Manor Subdivision Phase I.
9. Status of Re-Bid for Rawson Homes Drainage and Water Main Relay Project.
10. A Resolution to Reimburse Park Circle LLC for Installation of a Sanitary Sewer From the Capital Improvement Fund Contingency in the Full Amount of \$17,788 and also for the Oversizing Costs of a Water Main From the Water Impact Fee Fund in the Amount of \$80,085.
11. Professional Services Agreement with Ruekert-Mielke, Inc. to Perform a Review and Update of the City's Impact Fees and Impact Fee Studies.
12. A Resolution to Execute Brown and Caldwell Professional Services Agreement for Stormwater Reviews and Other On-Call Services.
13. A Resolution to Enter into a Contract with Thiel Brand Design and the Tourism Commission to provide Branding and Marketing Services to the City of Franklin.
14. An Ordinance to Create §19.11 Letting of Bids for Public Construction Projects, of the Municipal Code of the City of Franklin (Ald. Wilhelm).
15. Authorization for the Department of Public Works to Sell Surplus Equipment.
16. September 2018 Monthly Financial Report.
17. Potential Acquisition of Property for Public Park Purposes in the City Pursuant to the May 1, 2018 Common Council Action Upon the Parks Commission Recommendation to Move Forward with Park Land Acquisition Necessary Steps (and which Common Council Action Also Changed the Status of the Neighborhood Park Land Acquisition Project in the 2018 Capital Improvement Fund to an "Approved Project"). The Common Council may Enter Closed Session Pursuant to Wis. Stat. § 19.85(1)(e), for Market Competition and Bargaining Reasons, to Consider the Potential Acquisition of Properties to be Used for Public Park Purposes in the City Pursuant to the May 1, 2018 Common Council Action Upon the Parks Commission Recommendation to Move Forward with Park Land Acquisition Necessary Steps (and Which Common Council Action also Changed the Status of the Neighborhood Park Land Acquisition Project in the 2018 Capital Improvement Fund to an "Approved Project"), and to Reenter Open Session at the Same Place Thereafter to Act on Such Matters Discussed Therein as it Deems Appropriate.

H. Licenses and Permits.

Miscellaneous Licenses from License Committee Meeting of November 5, 2018.

Common Council Meeting Agenda

November 5, 2018

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- I. Bills.
Request for Approval of Vouchers and Payroll.
- J. Adjournment.

*Supporting documentation and details of these agenda items are available at City Hall during normal business hours.

[Note: Upon reasonable notice, efforts will be made to accommodate the needs of disabled individuals through appropriate aids and service. For additional information, contact the City Clerk's office at (414) 425-7500.]

REMINDERS:

November 6	General Election	7:00 a.m.-8:00 p.m.
November 8	Plan Commission Meeting	7:00 p.m.
November 13	Common Council Meeting	6:30 p.m.
November 22 & 23	Thanksgiving Holiday	City Hall Closed
December 4	Common Council Meeting	6:30 p.m.
December 6	Plan Commission Meeting	7:00 p.m.
December 18	Common Council Meeting	6:30 p.m.
December 24 & 25	City Hall Closed	
December 31 & January 1	City Hall Closed	

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Letter of Appreciation

Presented to Kristin Anderson

November 5th, 2018

The Franklin Fire Department would like to recognize and thank Franklin Public Health Nurse **Kristin Anderson** for her significant efforts in assisting the Department in updating and revising the City of Franklin's Emergency Operations Plan (EOP).

The existing EOP was out of date and no longer aligned with current industry standards, nor was it compatible with County and State emergency management plans.

Kristin was able to secure public health grant funding in order to hire a consultant to produce a draft revision of the EOP that met current best practices. Kristin then put significant time and effort into producing a thorough and detailed final plan that is specific to Franklin's staffing, operations, and interactions with other agencies throughout the region.

Kristin's collaborative effort with Fire Department staff is demonstrative of the positive and productive working relationships that exist across all departments within the City of Franklin, and is exemplary of the citizen-first attitude that exists among all City employees.

The Franklin Fire Department is highly appreciative of Kristin's efforts and attention to detail, and her work truly makes Franklin a better, safer community in which to live, work, and recreate.

A handwritten signature in black ink, appearing to read "Adam Remington".

Adam Remington
Fire Chief

A handwritten signature in black ink, appearing to read "Patrick Hays".

Patrick Hays
Assistant Fire Chief

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C.

CITY OF FRANKLIN
COMMON COUNCIL MEETING
OCTOBER 16, 2018
MINUTES

- | | | |
|--|---------|---|
| ROLL CALL | A. | The regular meeting of the Common Council was held on October 16, 2018 and called to order at 6:30 p.m. by Mayor Steve Olson in the Franklin City Hall Council Chambers, 9229 W. Loomis Road, Franklin, Wisconsin. On roll call, the following were in attendance: Alderman Mark Dandrea, Alderman Dan Mayer, Alderwoman Kristen Wilhelm, Alderman Steve F. Taylor, Alderman Mike Barber and Alderman John R. Nelson. Also present were City Engineer Glen Morrow, Dir. of Administration Mark Luberda, City Attorney Jesse A. Wesolowski and City Clerk Sandra Wesolowski. |
| CITIZEN COMMENT | B.1. | Citizen comment period was opened at 6:31 p.m. and closed at 6:31 p.m. |
| REFERENDUM
UPDATE | B.2.(a) | Mayor Olson provided an update on the Municipal Referendum at the November 6, 2018 General Election for increased Police staffing. |
| MINUTES
OCT. 2, 2018 | C. | Alderman Barber moved to approve the minutes of the regular Common Council Meeting of October 2, 2018 as presented at this meeting. Seconded by Alderman Dandrea. All voted Aye; motion carried. |
| APPT. TO PERSONNEL
COMMITTEE | E. | Alderman Mayer moved to confirm the Mayoral appointment of Frank Prusko, 8007 S. Steepleview Dr., Ald. Dist. 2, to the Personnel Committee for a 3-year unexpired term expiring 4/30/2019. Seconded by Alderman Barber. On roll call, all voted Aye. Motion carried. |
| POLICE DONATIONS | G.1. | Alderwoman Wilhelm moved to accept the donation from Robert Jester in the amount of \$100 in memory of his late wife Sheila to the General Police Donation Account and from South Milwaukee Family Dental in the amount of \$200 to the K9 Donation Account. Seconded by Alderman Mayer. All voted Aye; motion carried. |
| RES. 2018-7428
TID 6 PROJECT PLAN
AND BOUNDARIES | G.2. | Alderman Taylor moved to adopt Resolution No. 2018-7428, A RESOLUTION APPROVING THE PROJECT PLAN AND ESTABLISHING THE BOUNDARIES FOR AND THE CREATION OF TAX INCREMENTAL DISTRICT NO. 6, CITY OF FRANKLIN, WISCONSIN, as specified in Exhibit A of the Resolution. Seconded by Alderman Nelson. On roll call, voted Aye; voted No. Motion carried. |

- CIVIC CELEBRATIONS
COMM. 2018 AND 2019
EVENTS
- G.3. Alderman Taylor moved to accept and file the summary report from the 2018 Civic Celebrations event and allow John Bergner, Chairman of the Civic Celebrations Commission, to execute contracts and agreements for the 2019 Franklin Civic Celebrations event to be held July 3-6, 2019. Seconded by Alderman Mayer. All voted Aye; motion carried.
- AMEND UDO PDD
NO. 29 (INNOVATIVE
HEALTH AND FITNESS
BUILDING, LLC)
- G.4. Alderman Nelson moved to table at the call of the Planning Manager an Ordinance to Amend Section 15-3.0434 of the Unified Development Ordinance Planned Development District No. 29 (Wellness Center, Mark Carstensen, Inc.) For Construction of an Approximately 25,500 Square Foot Field House Building, to Allow Additional Uses as Permitted Uses Within the Existing Wellness Center, Including but Not Limited to Seasonal Outdoor Training, Physical Therapy, Sports League and Individual Play, etc. and to Allow Building Setbacks of 15 Feet and 30 Feet to the North and East Property Lines, Respectively, to Accommodate Construction of a Field House Building (8800 South 102nd Street) (Scott Cole, Owner of Innovative Health and Fitness Building, LLC, Applicant). Seconded by Alderman Dandrea. All voted Aye; motion carried.
- POLICE DEPT.
POSITIONS AND
DESCRIPTIONS
- G.5. Alderman Taylor moved to approve the creation of the position of Assistant Chief of Police to replace the position of Inspector of Police. Seconded by Alderman Dandrea. Alderman Taylor withdrew his motion with no objections from the Common Council.
- Alderman Dandrea then moved to approve renaming the job description for the Inspector of Police to Assistant Police Chief and updating the content as provided. Seconded by Alderman Mayer. All voted Aye; motion carried.
- Alderman Dandrea moved to approve the creation of the position of Recruit Officer. Seconded by Alderman Barber. All voted Aye; motion carried.
- Alderman Dandrea moved to approve changes to the job description for Emergency Services Dispatcher/Clerk. Seconded by Alderwoman Wilhelm. All voted Aye; motion carried.
- LETTER OF
UNDERSTANDING
WITH POLICE
OFFICERS ASSOC.
- G.6. Alderman Taylor moved to approve the Letter of Understanding between the City of Franklin and the Franklin Police Officers Association regarding pay and working conditions for officers attending a training academy and to authorize the Director of

REGARDING
TRAINING ACADEMY

Administration, as an administrative Human Resources step, to prepare and execute the individual contracts provided for therein. Seconded by Alderman Mayer. All voted Aye; motion carried.

INSP. DEPT.
INITIATIVE

G.7. No action was taken regarding the Building Inspection Department service improvement initiative.

PERMIT TECH.
POSITION AND
DESCRIPTION

G.8. Alderman Taylor moved to approve the newly created job description for Permit Technician in the Building Inspection Department as recommended by the Personnel Committee. Seconded by Alderman Barber. All voted Aye; motion carried.

WRS TRANSITION
STEPS

G.9. Alderman Taylor moved to direct the Director of Administration to work with labor counsel to prepare the necessary actions and plan amendments to incorporate the strategies set forth in the document titled "Transition Steps for Migration to WRS for Eligible, Non-Protective Service Employees: Impact on Employees and Existing Pension Plans" into the City of Franklin Defined Contribution Retirement Plan, the City of Franklin Defined Benefit Retirement Plan, the Employee Handbook, and the Civil Service Personnel Administration Manual. Seconded by Alderman Nelson. On roll call, Alderman Dandrea, Alderman Mayer, Alderman Taylor, Alderman Barber, and Alderman Nelson voted Aye; Alderwoman Wilhelm Abstained. Motion carried.

RES. 2018-7429
JANKE GENERAL
CONT., INC. CHANGE
ORDER FOR RIVER
PARK PATH BRIDGE

G.10. Alderman Barber moved to adopt Resolution No. 2018-7429, A RESOLUTION FOR FINAL CHANGE ORDER NO. 2 TO JANKE GENERAL CONTRACTORS, INC. FOR AN INCREASE OF \$8,764.70 FOR CONSTRUCTION OF RIVER PARK PATH BRIDGE. Seconded by Alderman Taylor. All voted Aye; motion carried.

ORD. 2018-2342
AMENDING 2018
BUDGETS FOR
CAPITAL OUTLAY
AND EQUIPMENT
REPLACEMENT
FUNDS

G.11. Alderman Taylor moved to adopt Ordinance No. 2018-2342, AN ORDINANCE TO AMEND ORDINANCE NO. 2017-2301, AN ORDINANCE ADOPTING THE 2018 ANNUAL BUDGETS FOR CAPITAL OUTLAY AND EQUIPMENT REPLACEMENT FUNDS FOR THE CITY OF FRANKLIN FOR FISCAL YEAR 2018, TO PROVIDE APPROPRIATIONS FOR ADDITIONAL VEHICLE PURCHASES USING INSURANCE PROCEEDS. Seconded by Alderman Nelson. On roll call, all voted Aye. Motion carried.

CONTRACT
APPROVALS WITH
ASSOCIATED BANK

G.12. Alderman Barber moved to authorize the Director of Administration to execute the necessary contract documents with Associated Bank for maintaining employee Health Savings

Accounts and with Employee Benefits Corporation (EBC) to add the EBC limited-FSA plan to the City's Plan Agreement. Seconded by Alderman Dandrea. All voted Aye; motion carried.

LICENSES AND
PERMITS

- H. Alderman Taylor moved to approve the following licenses: Hold Operator license applications for appearance for Rachel Werther, 10810 W Oakwood Rd.; Justin Agner, W136S7681 Fairfield Dr., Muskego; and Rachel Olson, 5206 W Oakwood Rd.; Grant Operator licenses to Alexis Adamek, 2251 S. 63rd St., West Allis; Janet Beyer, 8034 W. Lake Dr., Wind Lake; Louis Guzzo, 4 W. Clarendon Dr., Round Lake Beach, IL; and Stephanie Sauer, 10234 W. Deerwood Ln. Seconded by Alderman Nelson. All voted Aye; motion carried.

VOUCHERS AND
PAYROLL

- I. Alderman Barber moved to approve City vouchers with an ending date of October 11, 2018 in the amount of \$1,992,158.47; and payroll dated October 12, 2018 in the amount of \$404,273.24 and payments of the various payroll deductions in the amount of \$221,102.40 plus City matching payments; and estimated payroll dated October 26, 2018 in the amount of \$384,000.00 and payments of the various payroll deductions in the amount of \$408,000.00 plus City matching payments; and estimated payroll dated November 9, 2018 in the amount of \$396,000.00 and payments of the various payroll deductions in the amount of \$202,000.00 plus City matching payments; and the release of payment to Knight Barry, Inc. in the amount of \$1,443,196.33. Seconded by Alderman Dandrea. All voted Aye; motion carried.

CLOSED SESSION
TID 6

- G.13. Alderman Nelson moved to enter closed session at 7:40 p.m. pursuant to Wis. Stats. 19.85(1)(e), to deliberate upon a Potential Tax Incremental District No. 6 Mixed-Use Industrial, Commercial, Retail, Single-Family Residential and Open Space Uses Project Development Agreement, the negotiation of Agreement terms and the investing of public funds in relation thereto, for competitive and bargaining reasons, and to reenter open session at the same place thereafter to act on such matters discussed therein as it deems appropriate. Seconded by Alderman Barber. On roll call, all voted Aye. Motion carried.

The Common Council reentered open session at 8:03 p.m.

ADJOURNMENT

- J. Alderman Taylor moved to adjourn the regular meeting of the Common Council at 8:03 p.m. Seconded by Alderman Nelson. All voted Aye; motion carried.

APPROVAL <i>She</i>	REQUEST FOR COUNCIL ACTION	MEETING DATE November 5, 2018
REPORTS AND RECOMMENDATIONS	A Resolution Authorizing Certain Officials to Execute Storm Water Facilities Maintenance Agreements for a North Stormwater Pond, a South Stormwater Pond and a Biofiltration Pond upon properties approximately in the area adjoining Ballpark Drive, South Ballpark Drive and West Loomis Road (Ballpark Commons)	ITEM NUMBER <i>6.1.</i>

Attached is a copy of the above and a Storm Water Facilities Maintenance Agreement (Ballpark Commons) North Stormwater Pond, a Storm Water Facilities Maintenance Agreement (Ballpark Commons) South Stormwater Pond and a Storm Water Facilities Maintenance Agreement (Ballpark Commons) Biofiltration Pond. Such agreements are required by the Site Plan approval(s) for the Ballpark Commons development project.

COUNCIL ACTION REQUESTED

A motion to adopt A Resolution Authorizing Certain Officials to Execute Storm Water Facilities Maintenance Agreements for a North Stormwater Pond, a South Stormwater Pond and a Biofiltration Pond upon properties approximately in the area adjoining Ballpark Drive, South Ballpark Drive and West Loomis Road (Ballpark Commons).

STATE OF WISCONSIN

CITY OF FRANKLIN

MILWAUKEE COUNTY

RESOLUTION NO. 2018-____

A RESOLUTION AUTHORIZING CERTAIN OFFICIALS TO EXECUTE
STORM WATER FACILITIES MAINTENANCE AGREEMENTS FOR A NORTH
STORMWATER POND, A SOUTH STORMWATER POND AND A BIOFILTRATION
POND UPON PROPERTIES APPROXIMATELY IN THE AREA ADJOINING
BALLPARK DRIVE, SOUTH BALLPARK DRIVE AND WEST LOOMIS ROAD
(BALLPARK COMMONS)

WHEREAS, Storm Water Facilities Maintenance Agreements (Ballpark Commons) for a North Stormwater Pond, a South Stormwater Pond and a Biofiltration Pond upon properties approximately in the area adjoining Ballpark Drive, South Ballpark Drive and West Loomis Road, are required by the Site Plan approval(s) for the Ballpark Commons development project; and

WHEREAS, City staff has prepared such Storm Water Facilities Maintenance Agreements and reviewed the contents thereof with the developers' and property owners' representatives and staff recommends the entry into such agreements for the purposes set forth therein.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Common Council of the City of Franklin, Wisconsin, that the Storm Water Facilities Maintenance Agreement (Ballpark Commons) North Stormwater Pond with BPC County Land, LLC, owner, the Storm Water Facilities Maintenance Agreement (Ballpark Commons) South Stormwater Pond with Zim-Mar Properties, LLC, owner, and the Storm Water Facilities Maintenance Agreement (Ballpark Commons) Biofiltration Pond with Zim-Mar Properties, LLC, owner, in such form and content as annexed hereto, be and the same are hereby approved.

BE IT FURTHER RESOLVED, that the Mayor and City Clerk be and the same are hereby authorized to execute and deliver such agreements.

BE IT FINALLY RESOLVED, that the City Clerk be and is hereby directed to obtain the recording of the Storm Water Facilities Maintenance Agreements approved hereunder, in the Office of the Register of Deeds for Milwaukee County, Wisconsin.

Introduced at a regular meeting of the Common Council of the City of Franklin this _____ day of _____, 2018.

Passed and adopted at a regular meeting of the Common Council of the City of Franklin this _____ day of _____, 2018.

RESOLUTION NO. 2018-_____

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APPROVED:

ATTEST:

Stephen R. Olson, Mayor

Sandra L. Wesolowski, City Clerk

AYES _____ NOES _____ ABSENT _____

STORM WATER FACILITIES MAINTENANCE AGREEMENT

(BALLPARK COMMONS)
NORTH STORMWATER POND

This AGREEMENT, made and entered into this _____ day of _____, 2018, by and between BPC County Land, LLC, a Wisconsin limited liability company, hereinafter called the "Owner", and the City of Franklin, hereinafter called the "City".

WITNESSETH:

WHEREAS, the Owner is the owner of the following described lands situated in the City of Franklin, County of Milwaukee, State of Wisconsin, to-wit:

Lot 1 of Certified Survey Map No. 9041 recorded June 14, 2018 as Document No. 10785126 in the City of Franklin, Milwaukee County, Wisconsin

Hereinafter called the "Property".

WHEREAS, the Owner is developing the Property; and

WHEREAS, the Site Plan for Planned Development District No. 37, known as Ballpark Commons, hereinafter called the "Plan", which is expressly made a part hereof, as approved or to be approved by the City, provides for certain on-site storm water facilities within the confines of that portion of the Property more particularly depicted on Exhibit "C" attached hereto and made a part hereof (the "Stormwater Area"); and

WHEREAS, the City and the Owner, its successors and assigns ("successors and assigns" meaning to include any ownership association and all owners of the Property or any portion thereof), including any ownership association, agree that the health, safety, and welfare of the residents of the City of Franklin, require that on-site storm water facilities as defined in Section 15-8.0600 Unified Development Ordinance of the City of Franklin be constructed and maintained on the Property; and

WHEREAS, the City requires that on-site storm water management practices as shown on the Plan (the "Storm Water Facilities") be constructed and adequately maintained by the Owner, its successors and assigns.

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants contained herein, and the following terms and conditions, the parties hereto agree as follows:

1. The on-site Storm Water Facilities shall be constructed by Owner in accordance with the Plans and related specifications which are identified as part of the storm water system plan and erosion control plan approved by the City Engineer as part of the Plan. A depiction of such constructed Storm Water Facilities shall be submitted as part of the as-built drawings approved by the City Engineer.

2. The Owner, its successors and assigns, shall comply with the Guidelines/Procedures for Operation and Maintenance of Storm Water Pond attached hereto as Exhibit A (the "Guidelines") which require that the Storm Water Facilities shall be regularly inspected and maintained as often as conditions may require, but in any event, at least once each year. The Inspection and Maintenance Checklist Guidelines (the "Report") attached to this agreement as Exhibit "B" and by this reference made a part hereof shall be used for the purpose of the regular inspections of the Storm Water Facilities. The Owners, its successors and assigns, shall keep the Reports from past inspections for a period of five (5) years, as well as a log of maintenance activity indicating the date and type of maintenance completed of the Storm Water Facilities. The purpose of the inspections is to assure safe and proper functioning of the Storm Water Facilities. The inspections shall cover all Storm Water Facilities, including but not limited to berms, outlet structures, pond areas and access roads, if any, pursuant to the Plan. Deficiencies shall be noted in the Reports. The Reports and maintenance log shall be made reasonably available to the City for review.
3. The Owner, its successors and assigns, hereby grant permission to the City, its authorized agents and employees, to enter upon the Property and to inspect the Storm Water Facilities, whenever the City deems necessary upon at least forty-eight (48) hours advance notice to the Owner, except in the event of an emergency, in which case notice shall be provided as soon as reasonably possible. The purpose of inspection is to provide periodic review by City staff, to investigate reported deficiencies and/or to respond to citizen complaints. The City shall provide the Owner, its successors and assigns, copies of the inspection findings and a directive to commence with the repairs if necessary. Corrective actions shall be taken within a reasonable time frame as established by the City Engineer.
4. The Owner, its successors and assigns, shall adequately maintain the Storm Water Facilities, including but not limited to all pipes and channels built to convey storm water to said facilities, as well as all structures, improvements, and vegetation provided to control the quantity and quality of the storm water. Adequate maintenance is herein defined as keeping the Storm Water Facilities in good working condition so that these Storm Water Facilities are performing their designed functions and are in accordance with the Stormwater Basin Maintenance Standards as detailed in Section 15.8.0600 of the City of Franklin Unified Development Ordinance, and Section 13.12 (2) of the Milwaukee Metropolitan Sewerage District (MMSD) rules, and by this reference made a part hereof, as such standards and rules may be applicable pursuant to the Plan.
5. If the Owner, its successors and assigns fails to maintain the Storm Water Facilities in good working condition reasonably acceptable to the City and, after prior written notice by the City to the Owner of such failure, does not perform the required corrective actions in a reasonable time as established by the City Engineer in such written notice, the City may:
 - a) Issue a citation to the Owner, its successors and assigns as permitted by law. Such failure constitutes a violation of Section 15.8.0600 of the Unified Development Ordinance of the City of Franklin. The penalty for such violation of Section 15.8.0600 shall be not less

than \$100 nor more than \$2500 for each offense, together with the costs of prosecution. Each day that the violation exists shall constitute a separate offense, and

- b) Upon seven (7) additional days' written notice to Owner, perform the corrective actions identified in the inspection report and assess the Owner, its successors and assigns, for the reasonable, actual cost of such work. The cost of such work shall be specially charged against the Property pursuant to Wisconsin Statutes Section 66.0627. If the Storm Water Facilities are located on an outlot owned collectively by an ownership association, the City may specially charge each member of the ownership association according to the ownership interest in the Storm Water Facilities located on the Property. This provision shall not be construed to allow the City to erect any structure of permanent nature on the land of the Owner outside of the Stormwater Area for the Storm Water Facilities. It is expressly understood and agreed that the City is under no obligation to routinely maintain or repair said Storm Water Facilities and in no event shall this Agreement be construed to impose any such obligation on the City.
6. In the event the City, pursuant to this Agreement and applicable easements performs work of an emergency nature, or expends any funds in performance of said work in accordance with the terms of this Agreement for labor, use of equipment, supplies, materials, and the like, the Owner, its successors and assigns, shall reimburse the City upon demand, within thirty (30) days of receipt thereof for all reasonable, actual costs incurred by the City hereunder.
7. This Agreement imposes no liability of any kind whatsoever on the City and the Owner agrees to indemnify and hold the City harmless from any liability in the event the Storm Water Facilities fail to operate properly except to the extent such liability results from or arises out of the negligent or wrongful acts or omissions of the City, its agents or employees.
8. This Agreement shall be attached as an exhibit to any document which creates an ownership association that is responsible for maintenance of the Storm Water Facilities and shall be recorded at the Milwaukee County Register of Deeds, and shall constitute a covenant running with the land, and shall be binding on the Owner, its administrators, executors, assigns, heirs and any other successors in interest, including any ownership association and all owners of the Property or any portion thereof. The Owner shall provide the City with a copy of any document which creates an ownership association that is responsible for the Storm Water Facilities.
9. The Owner, its successors and assigns, is prohibited from building structures, installing play equipment, installing plants, changing grades or performing any other function that unreasonably inhibits care and maintenance of any Storm Water Facilities.
10. The Owner, its successor and assigns shall maintain, at all times, an individual(s) who will serve as a contact person(s).
11. This Agreement may not be modified or amended, except by a writing executed and delivered by the City and the Owner or their respective successors and assigns. This

Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

(Signatures follow on next pages)

IN WITNESS WHEREOF, the City and Owner have set forth their hands and seals, effective the date first above written.

BPC COUNTY LAND, LLC

By: BPC County Land Manager, Inc.
Its: Manager

By: _____

Name: Michael Zimmerman

Title: Sole Shareholder

STATE OF _____

ss

COUNTY OF _____

Before me personally appeared on the _____ day of _____, 2018, the above named Michael E. Zimmerman, the sole shareholder of BPC County Land Manager, Inc., the manager of BPC County Land, LLC to me known to be the person(s) who executed the foregoing Easement and acknowledged the same as the voluntary act and deed of said limited liability company.

NOTARY PUBLIC
My commission expires _____

CITY OF FRANKLIN

By: _____ (Seal)
Name: Stephen R. Olson
Title: Mayor

COUNTERSIGNED:

By: _____ (Seal)
Name: Sandra L. Wesolowski
Title: City Clerk

STATE OF WISCONSIN) ss.
COUNTY OF MILWAUKEE)

Personally came before me this _____ day of _____, 2018, the above named Stephen R. Olson, Mayor and Sandra L. Wesolowski, City Clerk, of the above named municipal corporation, City of Franklin, to me known to be such Mayor and City Clerk of said municipal corporation, and acknowledged that they had executed the foregoing instrument as such officers as the Deed of said municipal corporation by its authority and pursuant to the Resolution File No. _____, adopted by its Common Council on this _____ day of _____, 2018.

Notary Public, Milwaukee County, WI
My commission expires: _____

This instrument was drafted by the City Engineer for the City of Franklin.

Form approved:

Jesse A. Wesolowski, City Attorney

EXHIBIT A

GUIDELINES/PROCEDURES FOR OPERATION AND MAINTENANCE OF STORM WATER POND

Inspections

- 1) Inspections of ponds should be at a minimum of once per year. We further recommend that ponds be inspected on a monthly basis for debris, and that discretion be used for inspections after major storm events and to address any seasonal issues (mosquitoes, algae, vegetation, etc.). It is recommended that if only one inspection per year is performed, that it be during wet weather conditions to determine if the ponds are functioning properly.
- 2) Inspection priorities shall include:
 - a) Visual observation of the embankments for subsidence, erosion, cracking and woody plant material growth.
 - b) Visual observation of the conditions of the emergency spillway.
 - c) Visual observation of accumulation of sediment and debris in the outlet structure.
 - d) Visual observation of the adequacy of upstream and downstream channel erosion protection measures.
 - e) Visual observation and confirmation of any modification of the contributory watershed.
 - f) Visual observation of the pond and any channel side slope integrity.
 - g) Visual observation of filter strip areas for signs of erosion.
- 3) As-built plans shall be used for reference during the inspection procedures.

Mowing

- 1) The side slopes and embankments shall be mowed at least two times per year to prevent the growth of woody plants and control weed growth.
- 2) Periodic mowing of grass swales and filter strips will encourage vigorous grass cover and allow better inspections for erosion.
- 3) Additional mowing to further control the growth of weeds may be completed at the discretion of owner.

Debris and Litter Removal

- 1) Debris and litter shall be removed from pond area.
- 2) Debris and litter shall be removed from the primary and emergency outlet structures to prevent clogging.

Erosion Control

- 1) If the pond side slopes, emergency spillway and embankment show evidence of slumping and/or erosion, corrective measures such as re-grading, riprap, replacement and re-vegetation may be required. The owner shall complete the appropriate corrective measure to repair the problem.

Nuisance Control

- 1) Depending on the type of above ground storm water management basin, nuisance control may or may not be required. Field conditions shall dictate the need for nuisance control.
- 2) If applicable, biological control of nuisance algae and mosquitoes utilizing flat head minnows should be considered in lieu of chemical controls.
- 3) If applicable, mechanical control of these nuisances may be considered as another option to chemical or biological control.

Outlet Structure

- Visual inspection of components shall be performed and debris removed from inlet and storm drain pipes.
- Repair inlet/outlet areas, which are damaged or show signs of erosion.
- Repairs must restore the component to the specifications of the original plan.

NON-ROUTINE MAINTENANCE PROCEDURES

Structural Repairs and Replacement

- 1) Eventually, the primary outlets for the ponds will deteriorate and will need replacement. Routine maintenance and inspections will insure longevity of structures.

Sediment Removal

- 1) Unless otherwise specified in the storm water management plan, sediment clean out cycle is recommended every 10 to 20 years. It is recommended that sediment be removed from the permanent pool area once the permanent pool depth is less than 3 feet.
- 2) Bottom surveys of the sediment depth should be completed on a 5-year basis. If the sediment survey reveals an accelerated deposition rate, upstream conditions should be inspected for erosion control and sedimentation problems. Control of upstream erosion and sediment transport will decrease the rate of sediment deposition and thus preclude frequent, costly dredging and disposal operation.

EXHIBIT B

Inspection and Maintenance Checklist Guidelines

Development Name: _____ Date of Inspection: _____

Inspector Name: _____

Inspector Address: _____

Inspector Telephone Number: _____

Type of Inspection: Storm _____ Monthly _____ Annual _____ Other _____

_____ Check if stormwater management system has multiple ponds

Evaluation Criteria

N = Not investigated

0 = Not a problem

1 = Monitor (potential exists for future problem)

2 = Routine maintenance is required

3 = Immediate repair is necessary

* = Use open space after each section to further explain as needed

General Site Conditions

Trash or debris	N	0	1	2	3
Erosion	N	0	1	2	3
Excessive sediment deposits	N	0	1	2	3
Channels and/or Filter Strip Integrity	N	0	1	2	3

Storm Inlets, Catch Basins, Manholes (structures)

Trash or debris plugging more than 20% of opening	N	0	1	2	3
Accumulated sediment affecting inletting or outletting of structure	N	0	1	2	3
Missing or damaged frames, grates, covers, etc.	N	0	1	2	3
Structure condition	N	0	1	2	3
Other	N	0	1	2	3

Storm Sewer (piping)

Trash or debris present in pipe	N	0	1	2	3
Excessive sediment deposits in pipe	N	0	1	2	3
Pipe condition	N	0	1	2	3
Other	N	0	1	2	3

Pond - Inlets/Outlets (For multiple ponds, enter pond identifier)

Trash or debris plugging more than 20% of opening	N	0	1	2	3
Accumulated sediment > 10% of designed pond depth or affects inletting or outletting of facility	N	0	1	2	3
Missing or damaged frames, grates, covers, etc.	N	0	1	2	3
Structure condition	N	0	1	2	3
Other	N	0	1	2	3

Pond - Emergency Spillway and Berm

Trash and debris > 1 cf/1,000 sf (one standard sized	N	0	1	2	3
--	---	---	---	---	---

Pond - General

Inspectors Summary (please list general comments, corrective action to be taken with suggested time frame, and include photos and other documents as needed. Please attach additional pages if needed)

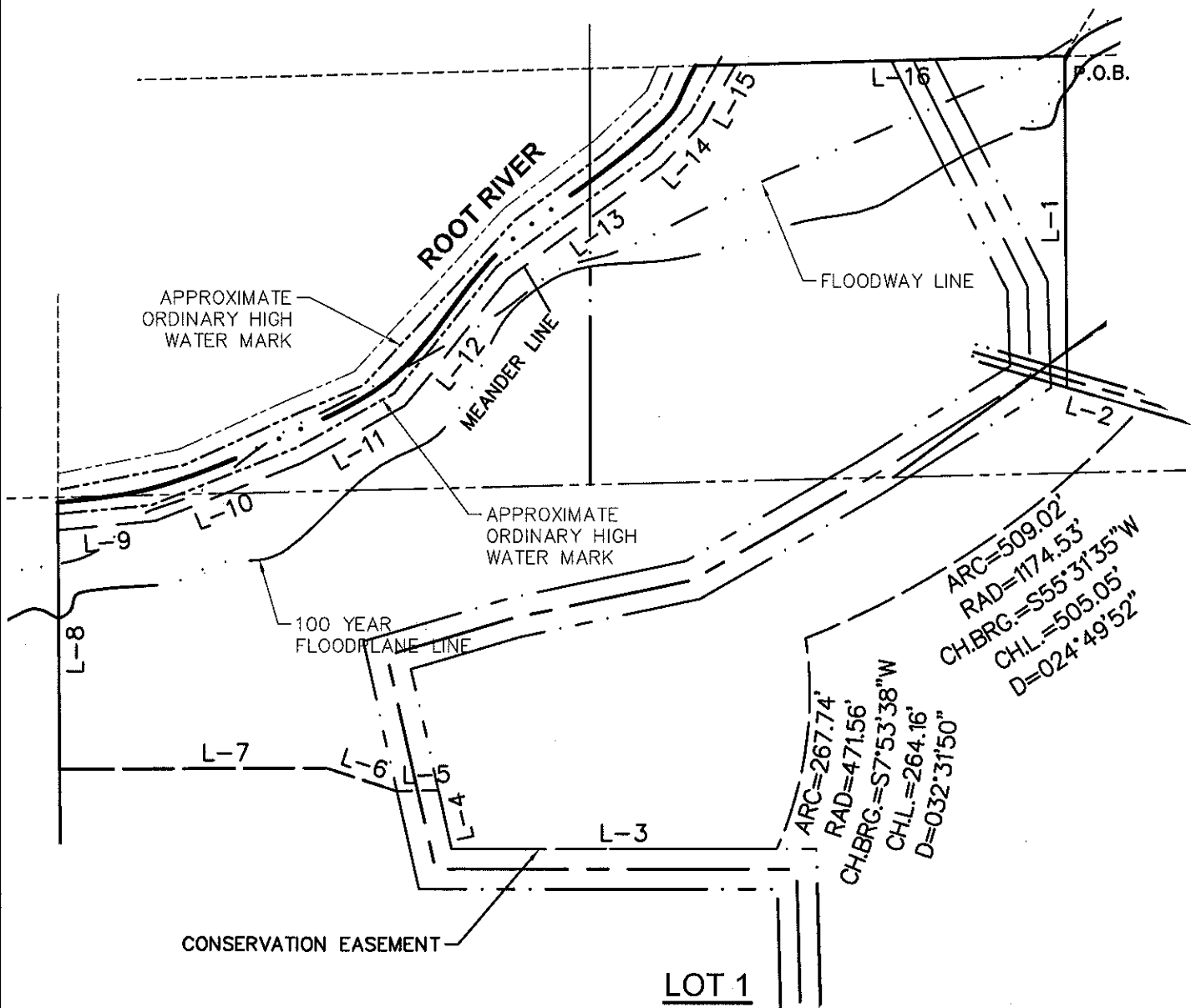
frame, and include photos and other documents as needed. Please attach additional pages if needed.

EXHIBIT C
STORMWATER AREA

(see attached)

EASEMENT EXHIBIT

PART OF LOT 1 OF CERTIFIED SURVEY MAP NO. 9041, IN THE NORTHEAST 1/4 AND NORTHWEST 1/4 OF THE SOUTHEAST 1/4 AND THE SOUTHEAST 1/4 AND SOUTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 4, TOWN 5 NORTH, RANGE 21 EAST, IN THE CITY OF FRANKLIN, MILWAUKEE COUNTY, WISCONSIN.



EASEMENT EXHIBIT

PART OF LOT 1 OF CERTIFIED SURVEY MAP NO. 9041 IN THE NORTHEAST 1/4 AND NORTHWEST 1/4 OF THE SOUTHEAST 1/4 AND THE SOUTHEAST 1/4 AND SOUTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 4, TOWN 5 NORTH, RANGE 21 EAST, IN THE CITY OF FRANKLIN, MILWAUKEE COUNTY, WISCONSIN, A CONSERVATION EASEMENT BOUNDED AND DESCRIBED AS FOLLOWS:

COMMENCING AT A NORTHERLY CORNER OF SAID LOT 1, BEING THE POINT OF BEGINNING OF LANDS TO BE DESCRIBED; THENCE S00°19'12"E ALONG THE EASTERLY LINE OF SAID LOT 412.42 FEET; THENCE S73°49'23"E 95.30 FEET; THENCE SOUTHWESTERLY 509.02 FEET ALONG THE ARC OF A CURVE TO THE RIGHT WHOSE CENTER LIES TO THE NORTHWEST, WHOSE RADIUS IS 1174.53 FEET AND WHOSE CHORD BEARS S55°31'35"W 505.05 FEET; THENCE SOUTHERLY 267.74 FEET ALONG THE ARC OF A CURVE TO THE RIGHT WHOSE CENTER LIES TO THE WEST, WHOSE RADIUS IS 471.56 FEET AND WHOSE CHORD BEARS S07°53'38"W 264.16 FEET; THENCE S89°55'18"W 405.55 FEET; THENCE N12°43'01"W 74.56 FEET; THENCE S88°35'24"W 50.94 FEET; THENCE N71°53'03"W 92.01 FEET; THENCE S89°35'23"W 331.21 FEET TO A POINT ON THE WEST LINE OF SAID LOT; THENCE N00°22'39"W ALONG THE WEST LINE OF SAID LOT 298.18, SAID POINT BEING ±34.5 FEET SOUTH OF THE CENTER LINE OF THE ROOT RIVER; THENCE N84°33'50"E ALONG THE MEANDER LINE OF SAID RIVER 121.27 FEET; THENCE N68°20'32"E 196.97 FEET; THENCE N60°37'13"E 145.24 FEET; THENCE N38°59'16"E 204.82 FEET; THENCE N53°55'28"E 235.59 FEET; THENCE N43°28'02"E 75.94 FEET; THENCE N29°32'57"E 83.17 FEET TO A POINT ON THE NORTH LINE OF SAID LOT, BEING ±50.2 FEET EAST OF THE CENTER LINE OF SAID RIVER; THENCE N88°33'22"E ALONG SAID NORTH LINE 409.54 FEET TO THE POINT OF BEGINNING.

CONTAINING 779,319 SQUARE FEET OR 17.8907 ACRES TO THE ORDINARY HIGH WATER MARK

EASEMENT LINE TABLE		
LINE	BEARING	DISTANCE
L-1	S00°19'12"E	412.42'
L-2	S73°49'23"E	95.30'
L-3	S89°55'18"W	405.55'
L-4	N12°43'01"W	74.56'
L-5	S88°35'24"W	50.94'
L-6	N71°53'03"W	92.01'
L-7	S89°35'23"W	331.21'
L-8	N00°22'39"W	298.18'
L-9	N84°33'50"E	121.27'
L-10	N68°20'32"E	196.97'
L-11	N60°37'13"E	145.24'
L-12	N38°59'16"E	204.82'
L-13	N53°55'28"E	235.59'
L-14	N43°28'02"E	75.94'
L-15	N29°32'57"E	83.17'
L-16	N88°33'22"E	409.54'

STORM WATER FACILITIES MAINTENANCE AGREEMENT

(BALLPARK COMMONS)
SOUTH STORMWATER POND

This AGREEMENT, made and entered into this _____ day of _____, 2018, by and between Zim-Mar Properties, LLC, a Wisconsin limited liability company, hereinafter called the "Owner", and the City of Franklin, hereinafter called the "City".

WITNESSETH:

WHEREAS, the Owner is the owner of the following described lands situated in the City of Franklin, County of Milwaukee, State of Wisconsin, to-wit:

Lot 2 of Certified Survey Map No. 9042 recorded June 14, 2018 as Document No. 10785127 in the City of Franklin, Milwaukee County, Wisconsin

Hereinafter called the "Property".

WHEREAS, the Owner is developing the Property; and

WHEREAS, the Site Plan for Planned Development District No. 37, known as Ballpark Commons, hereinafter called the "Plan", which is expressly made a part hereof, as approved or to be approved by the City, provides for certain on-site storm water facilities within the confines of that portion of the Property more particularly depicted on Exhibit "C" attached hereto and made a part hereof (the "Stormwater Area"); and

WHEREAS, the City and the Owner, its successors and assigns ("successors and assigns" meaning to include any ownership association and all owners of the Property or any portion thereof), including any ownership association, agree that the health, safety, and welfare of the residents of the City of Franklin, require that on-site storm water facilities as defined in Section 15-8.0600 Unified Development Ordinance of the City of Franklin be constructed and maintained on the Property; and

WHEREAS, the City requires that on-site storm water management practices as shown on the Plan (the "Storm Water Facilities") be constructed and adequately maintained by the Owner, its successors and assigns.

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants contained herein, and the following terms and conditions, the parties hereto agree as follows:

1. The on-site Storm Water Facilities shall be constructed by Owner in accordance with the Plans and related specifications which are identified as part of the storm water system plan and erosion control plan approved by the City Engineer as part of the Plan. A depiction of such constructed Storm Water Facilities shall be submitted as part of the as-built drawings approved by the City Engineer.

2. The Owner, its successors and assigns, shall comply with the Guidelines/Procedures for Operation and Maintenance of Storm Water Pond attached hereto as Exhibit A (the "Guidelines") which require that the Storm Water Facilities shall be regularly inspected and maintained as often as conditions may require, but in any event, at least once each year. The Inspection and Maintenance Checklist Guidelines (the "Report") attached to this agreement as Exhibit "B" and by this reference made a part hereof shall be used for the purpose of the regular inspections of the Storm Water Facilities. The Owners, its successors and assigns, shall keep the Reports from past inspections for a period of five (5) years, as well as a log of maintenance activity indicating the date and type of maintenance completed of the Storm Water Facilities. The purpose of the inspections is to assure safe and proper functioning of the Storm Water Facilities. The inspections shall cover all Storm Water Facilities, including but not limited to berms, outlet structures, pond areas and access roads, if any, pursuant to the Plan. Deficiencies shall be noted in the Reports. The Reports and maintenance log shall be made reasonably available to the City for review.
3. The Owner, its successors and assigns, hereby grant permission to the City, its authorized agents and employees, to enter upon the Property and to inspect the Storm Water Facilities, whenever the City deems necessary upon at least forty-eight (48) hours advance notice to the Owner, except in the event of an emergency, in which case notice shall be provided as soon as reasonably possible. The purpose of inspection is to provide periodic review by City staff, to investigate reported deficiencies and/or to respond to citizen complaints. The City shall provide the Owner, its successors and assigns, copies of the inspection findings and a directive to commence with the repairs if necessary. Corrective actions shall be taken within a reasonable time frame as established by the City Engineer.
4. The Owner, its successors and assigns, shall adequately maintain the Storm Water Facilities, including but not limited to all pipes and channels built to convey storm water to said facilities, as well as all structures, improvements, and vegetation provided to control the quantity and quality of the storm water. Adequate maintenance is herein defined as keeping the Storm Water Facilities in good working condition so that these Storm Water Facilities are performing their designed functions and are in accordance with the Stormwater Basin Maintenance Standards as detailed in Section 15.8.0600 of the City of Franklin Unified Development Ordinance, and Section 13.12 (2) of the Milwaukee Metropolitan Sewerage District (MMSD) rules, and by this reference made a part hereof, as such standards and rules may be applicable pursuant to the Plan.
5. If the Owner, its successors and assigns fails to maintain the Storm Water Facilities in good working condition reasonably acceptable to the City and, after prior written notice by the City to the Owner of such failure, does not perform the required corrective actions in a reasonable time as established by the City Engineer in such written notice, the City may:
 - a) Issue a citation to the Owner, its successors and assigns as permitted by law. Such failure constitutes a violation of Section 15.8.0600 of the Unified Development

Ordinance of the City of Franklin. The penalty for such violation of Section 15.8.0600 shall be not less than \$100 nor more than \$2500 for each offense, together with the costs of prosecution. Each day that the violation exists shall constitute a separate offense, and

- b) Upon seven (7) additional days' written notice to Owner, perform the corrective actions identified in the inspection report and assess the Owner, its successors and assigns, for the reasonable, actual cost of such work. The cost of such work shall be specially charged against the Property pursuant to Wisconsin Statutes Section 66.0627. If the Storm Water Facilities are located on an outlot owned collectively by an ownership association, the City may specially charge each member of the ownership association according to the ownership interest in the Storm Water Facilities located on the Property. This provision shall not be construed to allow the City to erect any structure of permanent nature on the land of the Owner outside of the Stormwater Area for the Storm Water Facilities. It is expressly understood and agreed that the City is under no obligation to routinely maintain or repair said Storm Water Facilities and in no event shall this Agreement be construed to impose any such obligation on the City.
6. In the event the City, pursuant to this Agreement and applicable easements performs work of an emergency nature, or expends any funds in performance of said work in accordance with the terms of this Agreement for labor, use of equipment, supplies, materials, and the like, the Owner, its successors and assigns, shall reimburse the City upon demand, within thirty (30) days of receipt thereof for all reasonable, actual costs incurred by the City hereunder.
7. This Agreement imposes no liability of any kind whatsoever on the City and the Owner agrees to indemnify and hold the City harmless from any liability in the event the Storm Water Facilities fail to operate properly except to the extent such liability results from or arises out of the negligent or wrongful acts or omissions of the City, its agents or employees.
8. This Agreement shall be attached as an exhibit to any document which creates an ownership association that is responsible for maintenance of the Storm Water Facilities and shall be recorded at the Milwaukee County Register of Deeds, and shall constitute a covenant running with the land, and shall be binding on the Owner, its administrators, executors, assigns, heirs and any other successors in interest, including any ownership association and all owners of the Property or any portion thereof. The Owner shall provide the City with a copy of any document which creates an ownership association that is responsible for the Storm Water Facilities.
9. The Owner, its successors and assigns, is prohibited from building structures, installing play equipment, installing plants, changing grades or performing any other function that unreasonably inhibits care and maintenance of any Storm Water Facilities.
10. The Owner, its successor and assigns shall maintain, at all times, an individual(s) who will serve as a contact person(s).

11. This Agreement may not be modified or amended, except by a writing executed and delivered by the City and the Owner or their respective successors and assigns. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

(Signatures follow on next pages)

IN WITNESS WHEREOF, the City and Owner have set forth their hands and seals, effective the date first above written.

ZIM-MAR PROPERTIES, LLC

By: _____

Name: Michael Zimmerman

Title: Co-Manager

By: _____

Name: Gregory D. Marso

Title: Co-Manager

STATE OF _____

ss

COUNTY OF _____

Before me personally appeared on the _____ day of _____, 2018, the above named Michael E. Zimmerman, the co-manager of Zim-Mar Properties, LLC to me known to be the person(s) who executed the foregoing Easement and acknowledged the same as the voluntary act and deed of said limited liability company.

NOTARY PUBLIC

My commission expires _____

STATE OF _____

ss

COUNTY OF _____

Before me personally appeared on the _____ day of _____, 2018, the above named Gregory D. Marso, the co-manager of Zim-Mar Properties, LLC to me known to be the person(s) who executed the foregoing Easement and acknowledged the same as the voluntary act and deed of said limited liability company.

NOTARY PUBLIC

My commission expires _____

CITY OF FRANKLIN

By: _____ (Seal)
Name: Stephen R. Olson
Title: Mayor

COUNTERSIGNED:

By: _____ (Seal)
Name: Sandra L. Wesolowski
Title: City Clerk

STATE OF WISCONSIN) ss.
COUNTY OF MILWAUKEE)

Personally came before me this _____ day of _____, 2018, the above named Stephen R. Olson, Mayor and Sandra L. Wesolowski, City Clerk, of the above named municipal corporation, City of Franklin, to me known to be such Mayor and City Clerk of said municipal corporation, and acknowledged that they had executed the foregoing instrument as such officers as the Deed of said municipal corporation by its authority and pursuant to the Resolution File No. , adopted by its Common Council on this _____ day of _____, 2018.

Notary Public, Milwaukee County, WI
My commission expires: _____

This instrument was drafted by the City Engineer for the City of Franklin.

Form approved:

Jesse A. Wesolowski, City Attorney

EXHIBIT A

GUIDELINES/PROCEDURES FOR OPERATION AND MAINTENANCE OF STORM WATER POND

Inspections

- 1) Inspections of ponds should be at a minimum of once per year. We further recommend that ponds be inspected on a monthly basis for debris, and that discretion be used for inspections after major storm events and to address any seasonal issues (mosquitoes, algae, vegetation, etc.). It is recommended that if only one inspection per year is performed, that it be during wet weather conditions to determine if the ponds are functioning properly.
- 2) Grass swales shall be preserved to allow free flowing of surface runoff in accordance with approved grading plans. No buildings or other structures are allowed in these areas. No grading or filling is allowed that may interrupt flows in any way.
- 3) Grass swales, inlets and outlets must be checked after heavy rains (minimum of annually) for signs of erosion. Any eroding areas must be repaired immediately to prevent premature sediment build-up in the basins. Erosion matting is recommended for repairing grassed areas.
- 4) Inspection priorities shall include:
 - a) Visual observation of the embankments for subsidence, erosion, cracking and woody plant material growth.
 - b) Visual observation of the conditions of the emergency spillway.
 - c) Visual observation of accumulation of sediment and debris in the outlet structure.
 - d) Visual obstruction of the adequacy of upstream and downstream channel erosion protection measures.
 - e) Visual observation and confirmation of any modification of the contributory watershed.
 - f) Visual observation of the pond and any channel side slope integrity.
- 3) As-built plans shall be used for reference during the inspection procedures.

Mowing

- 1) The side slopes and embankments shall be mowed at least two times per year to prevent the growth of woody plants and control weed growth.
- 2) Additional mowing to further control the growth of weeds may be completed at the discretion of owner.

Debris and Litter Removal

- 1) Debris and litter shall be removed from pond area.
- 2) Debris and litter shall be removed from the primary and emergency outlet structures to prevent clogging.

Erosion Control

- 1) If the pond side slopes, emergency spillway and embankment show evidence of slumping and/or erosion, corrective measures such as re-grading, riprap, replacement and re-vegetation may be required. The owner shall complete the appropriate corrective measure to repair the problem.

Nuisance Control

- 1) Depending on the type of above ground storm water management basin, nuisance control may or may not be required. Field conditions shall dictate the need for nuisance control.
- 2) If applicable, biological control of nuisance algae and mosquitoes utilizing flat head minnows should be considered in lieu of chemical controls.
- 3) If applicable, mechanical control of these nuisances may be considered as another option to chemical or biological control.

Outlet Structure

- Visual inspection of components shall be performed and debris removed from inlet and storm drain pipes.
- Repair inlet/outlet areas, which are damaged or show signs of erosion.
- Repairs must restore the component to the specifications of the original plan.

NON-ROUTINE MAINTENANCE PROCEDURES

Structural Repairs and Replacement

- 1) Eventually, the primary outlets for the ponds will deteriorate and will need replacement. Routine maintenance and inspections will insure longevity of structures.

Sediment Removal

- 1) Unless otherwise specified in the storm water management plan, sediment clean out cycle is recommended every 10 to 20 years. It is recommended that sediment be removed from the permanent pool area once the permanent pool depth is less than 3 feet.
- 2) Bottom surveys of the sediment depth should be completed on a 5-year basis. If the sediment survey reveals an accelerated deposition rate, upstream conditions should be inspected for erosion control and sedimentation problems. Control of upstream erosion and sediment transport will decrease the rate of sediment deposition and thus preclude frequent, costly dredging and disposal operation.

EXHIBIT B

Inspection and Maintenance Checklist Guidelines

Development Name: _____	Date of Inspection: _____
Inspector Name: _____	
Inspector Address: _____	
Inspector Telephone Number: _____	
Type of Inspection: Storm _____ Monthly _____ Annual _____ Other _____	
_____ Check if stormwater management system has multiple ponds	

Evaluation Criteria N = Not investigated 0 = Not a problem 1 = Monitor (potential exists for future problem)	2 = Routine maintenance is required 3 = Immediate repair is necessary * = Use open space after each section to further explain as needed
--	--

General Site Conditions					
Trash or debris	N	0	1	2	3
Erosion	N	0	1	2	3
Excessive sediment deposits	N	0	1	2	3
Other	N	0	1	2	3

Storm Inlets, Catch Basins, Manholes (structures)					
Trash or debris plugging more than 20% of opening	N	0	1	2	3
Accumulated sediment affecting inletting or outletting of structure	N	0	1	2	3
Missing or damaged frames, grates, covers, etc.	N	0	1	2	3
Structure condition	N	0	1	2	3
Other	N	0	1	2	3

Storm Sewer (piping)					
Trash or debris present in pipe	N	0	1	2	3
Excessive sediment deposits in pipe	N	0	1	2	3
Pipe condition	N	0	1	2	3
Other	N	0	1	2	3

Pond - Inlets/Outlets (For multiple ponds, enter pond identifier)					
Trash or debris plugging more than 20% of opening	N	0	1	2	3
Accumulated sediment > 10% of designed pond depth or affects inletting or outletting of facility	N	0	1	2	3
Missing or damaged frames, grates, covers, etc.	N	0	1	2	3
Structure condition	N	0	1	2	3
Other	N	0	1	2	3

Pond - Emergency Spillway and Berm					
Trash and debris > 1 cf/1,000 sf (one standard sized	N	0	1	2	3

garbage bag)					
Erosion	N	0	1	2	3
Growth does not allow/interferes with maintenance activities or affects overall system performance	N	0	1	2	3
General condition	N	0	1	2	3
Other	N	0	1	2	3

Inspectors Summary (please list general comments, corrective action to be taken with suggested time frame, and include photos and other documents as needed. Please attach additional pages if needed)

EXHIBIT C
STORMWATER AREA

(see attached)

EASEMENT EXHIBIT

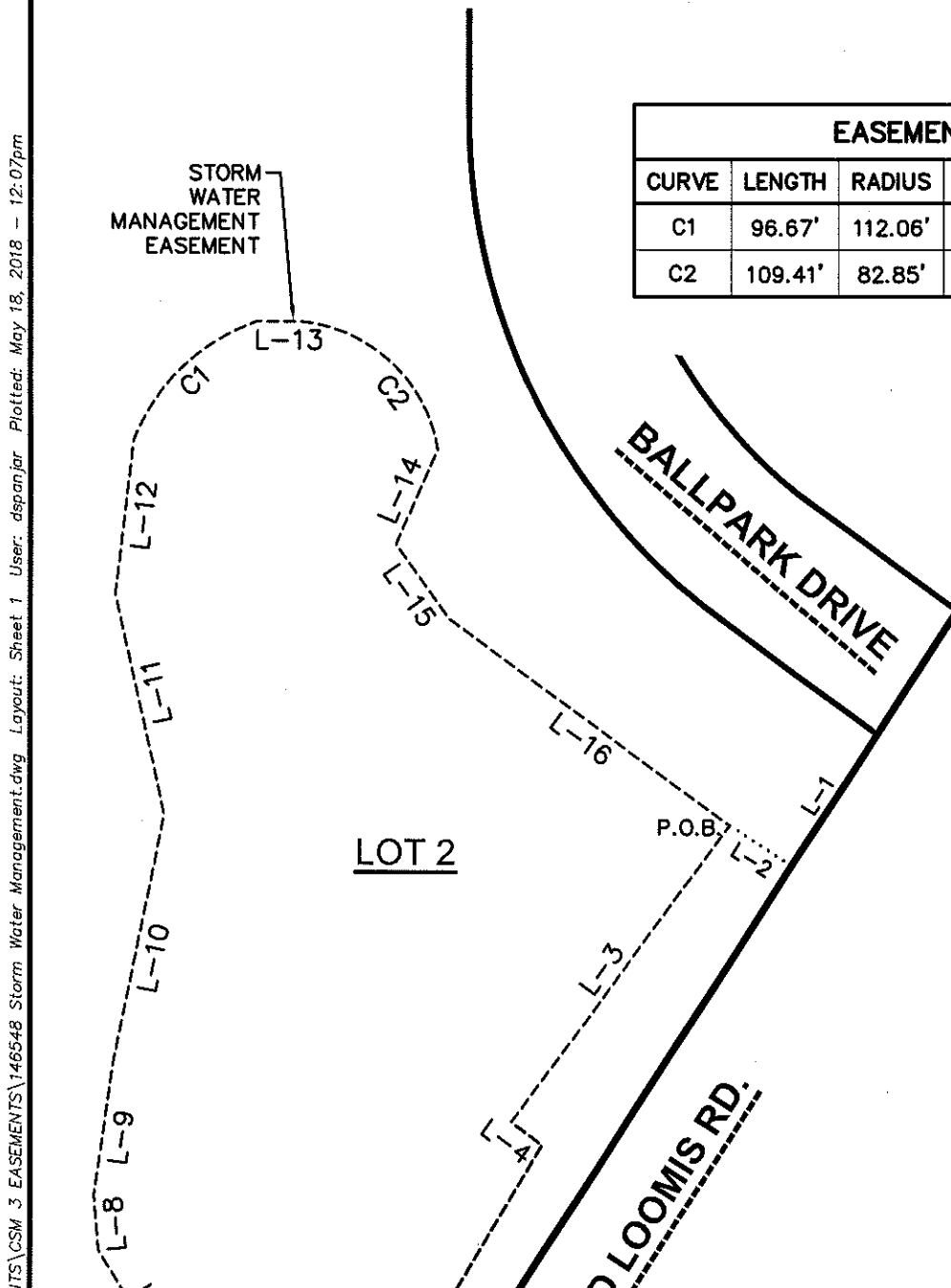
PART OF LOT 2 OF CERTIFIED SURVEY MAP NO. 9042, IN THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 9, TOWN 5 NORTH, RANGE 21 EAST, IN THE CITY OF FRANKLIN, MILWAUKEE COUNTY, WISCONSIN, BOUNDED AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEASTERLY CORNER OF SAID LOT 2; THENCE S32°45'47"W ALONG THE SOUTHERLY LINE OF SAID LOT 85.32 FEET; THENCE N57°14'13"W 40.55 FEET TO THE POINT OF BEGINNING OF LANDS TO BE DESCRIBED; THENCE S36°19'17"W 200.66 FEET; THENCE S53°40'43"E 21.00 FEET; THENCE S30°45'30"W 216.52 FEET; THENCE N59°15'05"W 96.74 FEET; THENCE N31°13'54"W 91.66 FEET; THENCE N04°38'53"W 30.45 FEET; THENCE N08°03'40"E 73.08 FEET; THENCE N11°43'51"E 138.03 FEET; THENCE N12°38'32"W 123.25 FEET; THENCE N06°46'26"E 84.45 FEET; THENCE S89°45'10"E 23.97 FEET; THENCE S23°32'52"W 56.08 FEET; THENCE S34°57'34"E 49.83 FEET; THENCE S53°40'32"E 190.01 FEET TO THE POINT OF BEGINNING.

LANDS CONTAINING 125,010 SQUARE FEET OR 2.8698 ACRES

EASEMENT CURVE TABLE					
CURVE	LENGTH	RADIUS	DELTA	CHORD	CHORD BEARING
C1	96.67'	112.06'	49°25'38"	93.70'	N 46°01'27" E
C2	109.41'	82.85'	75°39'46"	101.63'	S 46°37'08" E

EASEMENT LINE TABLE		
LINE	BEARING	DISTANCE
L-1	S32°45'47"W	85.32'
L-2	N57°14'13"W	40.55'
L-3	S36°19'17"W	200.66'
L-4	S53°40'43"E	21.00'
L-5	S30°45'30"W	216.52'
L-6	N59°15'05"W	96.74'
L-7	N31°13'54"W	91.66'
L-8	N04°38'53"W	30.45'
L-9	N08°03'40"E	73.08'
L-10	N11°43'51"E	138.03'
L-11	N12°38'32"W	123.25'
L-12	N06°46'26"E	84.45'
L-13	S89°45'10"E	23.97'
L-14	S23°32'52"W	56.08'
L-15	S34°57'34"E	49.83'
L-16	S53°40'32"E	190.01'



STORM WATER FACILITIES MAINTENANCE AGREEMENT

(BALLPARK COMMONS)
BIOFILTRATION POND

This AGREEMENT, made and entered into this _____ day of _____, 2018, by and between Zim-Mar Properties, LLC, a Wisconsin limited liability company, hereinafter called the "Owner", and the City of Franklin, hereinafter called the "City".

WITNESSETH:

WHEREAS, the Owner is the owner of the following described lands situated in the City of Franklin, County of Milwaukee, State of Wisconsin, to-wit:

Lot 3 of Certified Survey Map No. 9078 recorded October 16, 2018 as Document No. 10820171 in the City of Franklin, Milwaukee County, Wisconsin

Hereinafter called the "Property".

WHEREAS, the Owner is developing the Property; and

WHEREAS, the Site Plan for Planned Development District No. 37, known as Ballpark Commons, hereinafter called the "Plan", which is expressly made a part hereof, as approved or to be approved by the City, provides for certain on-site storm water facilities within the confines of that portion of the Property more particularly depicted on Exhibit "C" attached hereto and made a part hereof (the "Stormwater Area"); and

WHEREAS, the City and the Owner, its successors and assigns ("successors and assigns" meaning to include any ownership association and all owners of the Property or any portion thereof), including any ownership association, agree that the health, safety, and welfare of the residents of the City of Franklin, require that on-site storm water facilities as defined in Section 15-8.0600 Unified Development Ordinance of the City of Franklin be constructed and maintained on the Property; and

WHEREAS, the City requires that on-site storm water management practices as shown on the Plan (the "Storm Water Facilities") be constructed and adequately maintained by the Owner, its successors and assigns.

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants contained herein, and the following terms and conditions, the parties hereto agree as follows:

1. The on-site Storm Water Facilities shall be constructed by Owner in accordance with the Plans and related specifications which are identified as part of the storm water system plan and erosion control plan approved by the City Engineer as part of the Plan. A depiction of such constructed Storm Water Facilities shall be submitted as part of the as-built drawings approved by the City Engineer.

2. The Owner, its successors and assigns, shall comply with the Guidelines/Procedures for Operation and Maintenance of Storm Water Pond attached hereto as Exhibit A (the "Guidelines") which require that the Storm Water Facilities shall be regularly inspected and maintained as often as conditions may require, but in any event, at least once each year. The Inspection and Maintenance Checklist Guidelines (the "Report") attached to this agreement as Exhibit "B" and by this reference made a part hereof shall be used for the purpose of the regular inspections of the Storm Water Facilities. The Owners, its successors and assigns, shall keep the Reports from past inspections for a period of five (5) years, as well as a log of maintenance activity indicating the date and type of maintenance completed of the Storm Water Facilities. The purpose of the inspections is to assure safe and proper functioning of the Storm Water Facilities. The inspections shall cover all Storm Water Facilities, including but not limited to berms, outlet structures, pond areas and access roads, if any, pursuant to the Plan. Deficiencies shall be noted in the Reports. The Reports and maintenance log shall be made reasonably available to the City for review.
3. The Owner, its successors and assigns, hereby grant permission to the City, its authorized agents and employees, to enter upon the Property and to inspect the Storm Water Facilities, whenever the City deems necessary upon at least forty-eight (48) hours advance notice to the Owner, except in the event of an emergency, in which case notice shall be provided as soon as reasonably possible. The purpose of inspection is to provide periodic review by City staff, to investigate reported deficiencies and/or to respond to citizen complaints. The City shall provide the Owner, its successors and assigns, copies of the inspection findings and a directive to commence with the repairs if necessary. Corrective actions shall be taken within a reasonable time frame as established by the City Engineer.
4. The Owner, its successors and assigns, shall adequately maintain the Storm Water Facilities, including but not limited to all pipes and channels built to convey storm water to said facilities, as well as all structures, improvements, and vegetation provided to control the quantity and quality of the storm water. Adequate maintenance is herein defined as keeping the Storm Water Facilities in good working condition so that these Storm Water Facilities are performing their designed functions and are in accordance with the Stormwater Basin Maintenance Standards as detailed in Section 15.8.0600 of the City of Franklin Unified Development Ordinance, and Section 13.12 (2) of the Milwaukee Metropolitan Sewerage District (MMSD) rules, and by this reference made a part hereof, as such standards and rules may be applicable pursuant to the Plan.
5. If the Owner, its successors and assigns fails to maintain the Storm Water Facilities in good working condition reasonably acceptable to the City and, after prior written notice by the City to the Owner of such failure, does not perform the required corrective actions in a reasonable time as established by the City Engineer in such written notice, the City may:
 - a) Issue a citation to the Owner, its successors and assigns as permitted by law. Such failure constitutes a violation of Section 15.8.0600 of the Unified Development Ordinance of the City of Franklin. The penalty for such violation of Section 15.8.0600 shall be not less

than \$100 nor more than \$2500 for each offense, together with the costs of prosecution. Each day that the violation exists shall constitute a separate offense, and

- b) Upon seven (7) additional days' written notice to Owner, perform the corrective actions identified in the inspection report and assess the Owner, its successors and assigns, for the reasonable, actual cost of such work. The cost of such work shall be specially charged against the Property pursuant to Wisconsin Statutes Section 66.0627. If the Storm Water Facilities are located on an outlot owned collectively by an ownership association, the City may specially charge each member of the ownership association according to the ownership interest in the Storm Water Facilities located on the Property. This provision shall not be construed to allow the City to erect any structure of permanent nature on the land of the Owner outside of the Stormwater Area for the Storm Water Facilities. It is expressly understood and agreed that the City is under no obligation to routinely maintain or repair said Storm Water Facilities and in no event shall this Agreement be construed to impose any such obligation on the City.
6. In the event the City, pursuant to this Agreement and applicable easements performs work of an emergency nature, or expends any funds in performance of said work in accordance with the terms of this Agreement for labor, use of equipment, supplies, materials, and the like, the Owner, its successors and assigns, shall reimburse the City upon demand, within thirty (30) days of receipt thereof for all reasonable, actual costs incurred by the City hereunder.
7. This Agreement imposes no liability of any kind whatsoever on the City and the Owner agrees to indemnify and hold the City harmless from any liability in the event the Storm Water Facilities fail to operate properly except to the extent such liability results from or arises out of the negligent or wrongful acts or omissions of the City, its agents or employees.
8. This Agreement shall be attached as an exhibit to any document which creates an ownership association that is responsible for maintenance of the Storm Water Facilities and shall be recorded at the Milwaukee County Register of Deeds, and shall constitute a covenant running with the land, and shall be binding on the Owner, its administrators, executors, assigns, heirs and any other successors in interest, including any ownership association and all owners of the Property or any portion thereof. The Owner shall provide the City with a copy of any document which creates an ownership association that is responsible for the Storm Water Facilities.
9. The Owner, its successors and assigns, is prohibited from building structures, installing play equipment, installing plants, changing grades or performing any other function that unreasonably inhibits care and maintenance of any Storm Water Facilities.
10. The Owner, its successor and assigns shall maintain, at all times, an individual(s) who will serve as a contact person(s).
11. This Agreement may not be modified or amended, except by a writing executed and delivered by the City and the Owner or their respective successors and assigns. This

Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

(Signatures follow on next pages)

IN WITNESS WHEREOF, the City and Owner have set forth their hands and seals, effective the date first above written.

ZIM-MAR PROPERTIES, LLC

By: _____

Name: Michael Zimmerman

Title: Co-Manager

By: _____

Name: Gregory D. Marso

Title: Co-Manager

STATE OF _____

ss

COUNTY OF _____

Before me personally appeared on the _____ day of _____, 2018, the above named Michael E. Zimmerman, the co-manager of Zim-Mar Properties, LLC to me known to be the person(s) who executed the foregoing Easement and acknowledged the same as the voluntary act and deed of said limited liability company.

NOTARY PUBLIC

My commission expires _____

STATE OF _____

ss

COUNTY OF _____

Before me personally appeared on the _____ day of _____, 2018, the above named Gregory D. Marso, the co-manager of Zim-Mar Properties, LLC to me known to be the person(s) who executed the foregoing Easement and acknowledged the same as the voluntary act and deed of said limited liability company.

NOTARY PUBLIC

My commission expires _____

CITY OF FRANKLIN

By: _____ (Seal)
Name: Stephen R. Olson
Title: Mayor

COUNTERSIGNED:

By: _____ (Seal)
Name: Sandra L. Wesolowski
Title: City Clerk

STATE OF WISCONSIN) ss.
COUNTY OF MILWAUKEE)

Personally came before me this _____ day of _____, 2018, the above named Stephen R. Olson, Mayor and Sandra L. Wesolowski, City Clerk, of the above named municipal corporation, City of Franklin, to me known to be such Mayor and City Clerk of said municipal corporation, and acknowledged that they had executed the foregoing instrument as such officers as the Deed of said municipal corporation by its authority and pursuant to the Resolution File No. _____, adopted by its Common Council on this _____ day of _____, 2018.

Notary Public, Milwaukee County, WI
My commission expires: _____

This instrument was drafted by the City Engineer for the City of Franklin.

Form approved:

Jesse A. Wesolowski, City Attorney

EXHIBIT A

GUIDELINES/PROCEDURES FOR OPERATION AND MAINTENANCE OF BIOFILTRATION POND

Inspections

- 1) Inspections of ponds should be at a minimum of once per year. We further recommend that ponds be inspected on a monthly basis for debris, and that discretion be used for inspections after major storm events and to address any seasonal issues (mosquitoes, algae, vegetation, etc.). It is recommended that if only one inspection per year is performed, that it be during wet weather conditions to determine if the ponds are functioning properly.
- 2) Grass swales shall be preserved to allow free flowing of surface runoff in accordance with approved grading plans. No buildings or other structures are allowed in these areas. No grading or filling is allowed that may interrupt flows in any way.
- 3) Grass swales, inlets and outlets must be checked after heavy rains (minimum of annually) for signs of erosion. Any eroding areas must be repaired immediately to prevent premature sediment build-up in the basins. Erosion matting is recommended for repairing grassed areas.
- 4) Inspection priorities shall include:
 - a) Visual observation of the embankments for subsidence, erosion, cracking and woody plant material growth.
 - b) Visual observation of the conditions of the emergency spillway.
 - c) Visual observation of accumulation of sediment and debris in the outlet structure.
 - d) Visual observation of the adequacy of upstream and downstream channel erosion protection measures.
 - e) Visual observation and confirmation of any modification of the contributory watershed.
 - f) Visual observation of the pond and any channel side slope integrity.
- 3) As-built plans shall be used for reference during the inspection procedures.

Mowing

- 1) The side slopes and embankments shall be mowed at least two times per year to prevent the growth of woody plants and control weed growth.

Debris and Litter Removal

- 1) Debris and litter shall be removed from pond area.
- 2) Debris and litter shall be removed from the primary and emergency outlet structures to prevent clogging.

Erosion Control

- 1) If the pond side slopes, emergency spillway and embankment show evidence of slumping and/or erosion, corrective measures such as re-grading, riprap, replacement and re-vegetation may be required. The owner shall complete the appropriate corrective measure to repair the problem.

Nuisance Control

- 1) Depending on the type of above ground storm water management basin, nuisance control may or may not be required. Field conditions shall dictate the need for nuisance control.

- 2) If applicable, biological control of nuisance algae and mosquitoes utilizing flat head minnows should be considered in lieu of chemical controls.
- 3) If applicable, mechanical control of these nuisances may be considered as another option to chemical or biological control.

Outlet Structure

- Visual inspection of components shall be performed and debris removed from inlet and storm drain pipes.
- Repair inlet/outlet areas, which are damaged or show signs of erosion.
- Repairs must restore the component to the specifications of the original plan.

NON-ROUTINE MAINTENANCE PROCEDURES (BIOFILTRATION BASIN)

Storm Sewer

- The owner shall maintain all components of the private storm sewer system located onsite. Installation and maintenance shall be in accordance with the manufacturer's guidelines.
- At a minimum, the storm sewer system shall be inspected annually and cleaned as needed to maintain design capacity. Any alterations to approved design shall be approved by City Engineer.
- Owner shall maintain records of inspections, cleaning and replacement of the storm sewer system in accordance with Wisconsin DNR Guidelines.

Underdrain

- Visual inspection of components shall be performed and debris removed from outlet.
- Repair outlet areas which are damaged or show signs of erosion.
- Repairs must restore the component to the specifications of the original plan.

Biofiltration Facility

- Owner shall install a Bio-Filtration System in accordance with the approved Construction Plans.
- Maintenance procedures shall be in accordance with Wisconsin Department of Natural Resources Technical Standard 1004 – Bioretention for Infiltration.
- Owner shall maintain records of installation, inspections, cleaning and any other maintenance in accordance with Wisconsin DNR Guidelines.
- Visual Inspection of the Bio-Filtration System shall be performed, at a minimum, annually.
- Maintenance shall be required when system shows standing water beyond 72 hours of rain event.
- Cleaning shall consist of removal of sediment, two (2) foot undercut, and replacement with material complying with the original approved Construction Plans, and restoration in-kind.
- Restoration of plant material shall be by plugging, not seeding alone.
- Any alterations to approved Bio-Filtration System shall be approved by Engineer of Record.
- Infiltration surface shall be protected from construction sediment with staging or through the use of erosion control measures. Facility shall be inspected upon completion to confirm that clogging due to construction sediment has not occurred.
- In the first spring and summer after construction, water the area once per week during the first 8 weeks if rainfall has not occurred within the previous 7 days. At least 1 inch of water is recommended per week.
- Inspect and record status of components of bio-filtration facility including infiltration surface, surface mulch, plug plants, and basin overflow. Also record days since last rainfall and approximate rainfall depth.
- Facility shall be considered compromised if surface water remains ponded greater than 48 hours after termination of previous rainfall event.

- If compromised, facility shall be restored per specifications of originally approved plan or modified as approved by the Engineer of Record.
- Mowing is prohibited in Bio-Filtration Facility.
- All vehicular or equipment is prohibited from driving onto or across facility.
- Pedestrian traffic is prohibited from crossing facility.
- Snow shall not be dumped directly onto the infiltration surface.

EXHIBIT B

Inspection and Maintenance Checklist Guidelines

Development Name: _____ Date of Inspection: _____

Inspector Name: _____

Inspector Address: _____

Inspector Telephone Number: _____

Type of Inspection: Storm _____ Monthly _____ Annual _____ Other _____

_____ Check if stormwater management system has multiple ponds

Evaluation Criteria

N = Not investigated

0 = Not a problem

1 = Monitor (potential exists for future problem)

2 = Routine maintenance is required

3 = Immediate repair is necessary

* = Use open space after each section to further explain as needed

General Site Conditions

Trash or debris	N	0	1	2	3
Erosion	N	0	1	2	3
Excessive sediment deposits	N	0	1	2	3
Other	N	0	1	2	3

Storm Inlets, Catch Basins, Manholes (structures)

Trash or debris plugging more than 20% of opening	N	0	1	2	3
Accumulated sediment affecting inletting or outletting of structure	N	0	1	2	3
Missing or damaged frames, grates, covers, etc.	N	0	1	2	3
Structure condition	N	0	1	2	3
Other	N	0	1	2	3

Storm Sewer (piping)

Trash or debris present in pipe	N	0	1	2	3
Excessive sediment deposits in pipe	N	0	1	2	3
Pipe condition	N	0	1	2	3
Other	N	0	1	2	3

Pond - Inlets/Outlets (For multiple ponds, enter pond identifier)

Trash or debris plugging more than 20% of opening	N	0	1	2	3
Accumulated sediment > 10% of designed pond depth or affects inletting or outletting of facility	N	0	1	2	3
Missing or damaged frames, grates, covers, etc.	N	0	1	2	3
Structure condition	N	0	1	2	3
Other	N	0	1	2	3

Pond - Emergency Spillway and Berm

Trash and debris > 1 cf/1,000 sf (one standard sized	N	0	1	2	3
--	---	---	---	---	---

garbage bag)					
Erosion	N	0	1	2	3
Growth does not allow/interferes with maintenance activities or affects overall system performance	N	0	1	2	3
General condition	N	0	1	2	3
Other	N	0	1	2	3

Inspectors Summary (please list general comments, corrective action to be taken with suggested time frame, and include photos and other documents as needed. Please attach additional pages if needed)

EXHIBIT C
STORMWATER AREA

(see attached)

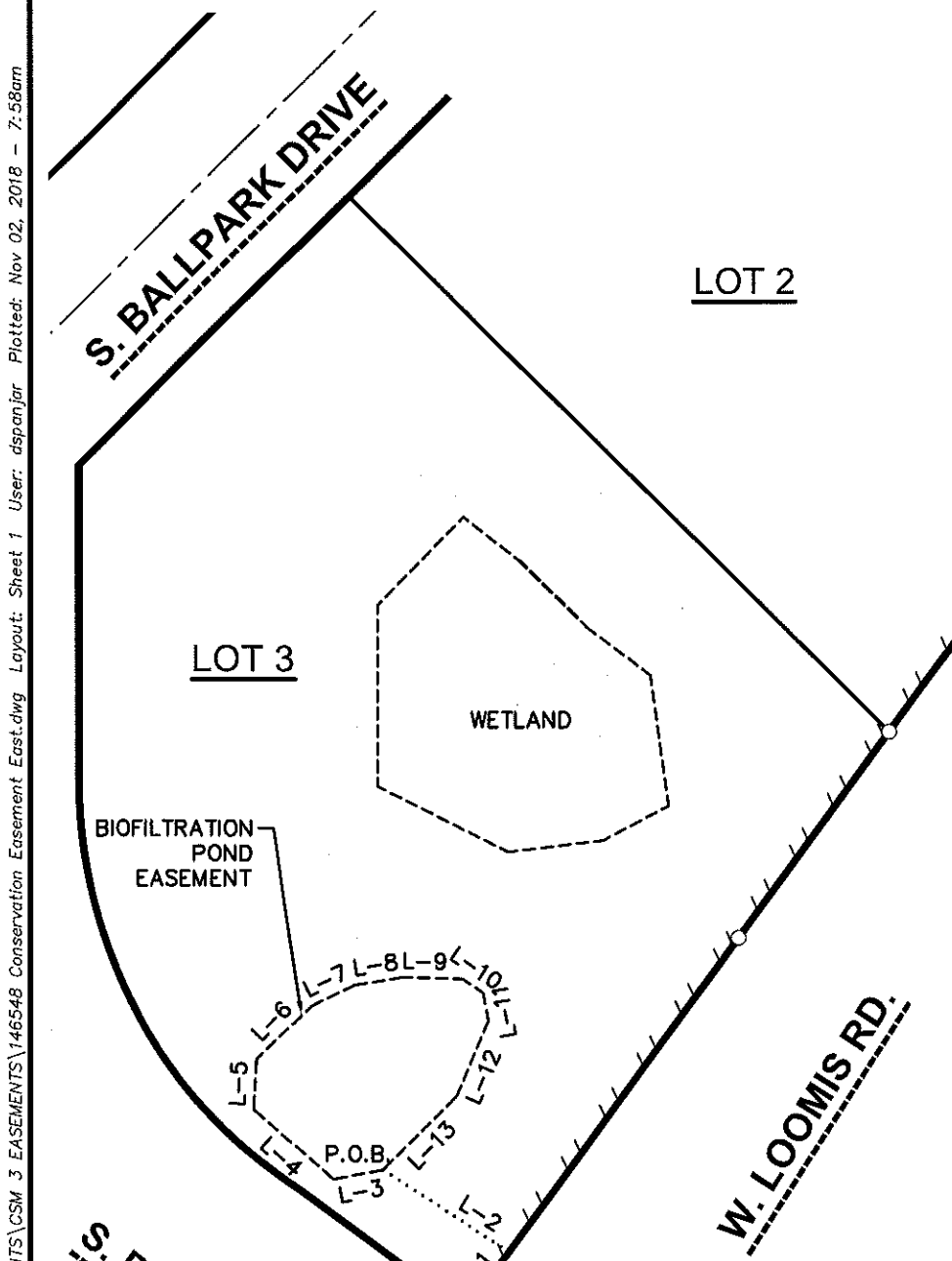
EASEMENT EXHIBIT

PART OF LOT 3 OF CERTIFIED SURVEY MAP NO. 9078, IN THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 9, TOWN 5 NORTH, RANGE 21 EAST, IN THE CITY OF FRANKLIN, MILWAUKEE COUNTY, WISCONSIN, BOUNDED AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHERLY CORNER OF SAID LOT; THENCE N36°00'15"E ALONG THE SOUTHEASTERLY LINE OF SAID LOT 39.74 FEET; THENCE N57°14'13"W 80.11 FEET TO THE POINT OF BEGINNING OF LANDS TO BE DESCRIBED; THENCE S79°15'59"W 26.84 FEET; THENCE N48°11'11"W 55.22 FEET; THENCE N03°00'01"E 26.96 FEET; THENCE N44°50'37"E 40.27 FEET; THENCE N63°43'03"E 25.08 FEET; THENCE N80°47'35"E 25.83 FEET; THENCE S88°45'22"E 32.21 FEET; THENCE S55°55'09"E 13.46 FEET; THENCE S10°25'13"E 15.11 FEET; THENCE S23°09'09"W 43.75 FEET; THENCE S44°57'50"W 55.40 FEET TO THE POINT OF BEGINNING.

LANDS CONTAINING 9,135 SQUARE FEET OR 0.2097 ACRES

EASEMENT LINE TABLE		
LINE	BEARING	DISTANCE
L-1	N36°00'15"E	39.74'
L-2	N57°14'13"W	80.11'
L-3	S79°15'59"W	26.84'
L-4	N48°11'11"W	55.22'
L-5	N03°00'01"E	26.96'
L-6	N44°50'37"E	40.27'
L-7	N63°43'03"E	25.08'
L-8	N80°47'35"E	25.83'
L-9	S88°45'22"E	32.21'
L-10	S55°55'09"E	13.46'
L-11	S10°25'13"E	15.11'
L-12	S23°09'09"W	43.75'
L-13	S44°57'50"W	55.40'



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APPROVAL <i>Slw</i>	REQUEST FOR COUNCIL ACTION	MEETING DATE November 5, 2018
REPORTS AND RECOMMENDATIONS	A Resolution Authorizing Certain Officials to Execute a Payment in Lieu of Taxes Agreement Between Franklin RE, LLC and the City of Franklin for the Property Located at 7220 Ballpark Drive, Franklin, Wisconsin 53132 (Tax Key No. 754-9007-000) (Ballpark Commons)	ITEM NUMBER <i>G.2.</i>

Attached is a copy of the above resolution and the Payment in Lieu of Taxes Agreement for the Senior Housing Development property. The Agreement was required by the Site Plan approval for the subject property in Plan Commission Resolution No. 2018-008, conditionally approving a Site Plan for a Senior Housing Development within the Planned Development District No. 37 (The Rock Sports Complex/Ballpark Commons) development use, in Condition 5., adopted on June 21, 2018. Staff will be present at the meeting to provide information regarding this subject as may be requested by the Common Council.

COUNCIL ACTION REQUESTED

A motion to adopt A Resolution Authorizing Certain Officials to Execute a Payment in Lieu of Taxes Agreement Between Franklin RE, LLC and the City of Franklin for the Property Located at 7220 Ballpark Drive, Franklin, Wisconsin 53132 (Tax Key No. 754-9007-000) (Ballpark Commons).

Legal Services Dept.: jw

STATE OF WISCONSIN

CITY OF FRANKLIN

MILWAUKEE COUNTY

RESOLUTION NO. 2018-____

A RESOLUTION AUTHORIZING CERTAIN OFFICIALS TO EXECUTE A PAYMENT
IN LIEU OF TAXES AGREEMENT BETWEEN FRANKLIN RE, LLC AND THE CITY
OF FRANKLIN FOR THE PROPERTY LOCATED AT 7220 BALLPARK DRIVE,
FRANKLIN, WISCONSIN 53132 (TAX KEY NO. 754-9007-000)
(BALLPARK COMMONS)

WHEREAS, the Senior Housing Development property of the Ballpark Commons Development project is in the process of a sale and purchase transaction and the ultimate financing thereof to proceed and provide for the Senior Housing Development; and

WHEREAS, Franklin RE, LLC is the purchaser and will be the owner of the Senior Housing Development property; and

WHEREAS, a payment in lieu of taxes agreement was required by the Site Plan approval for the subject property in Plan Commission Resolution No. 2018-008, conditionally approving a Site Plan for a Senior Housing Development within the Planned Development District No. 37 (The Rock Sports Complex/Ballpark Commons) development use, in Condition 5., adopted on June 21, 2018.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Common Council of the City of Franklin, Wisconsin, that the Payment in Lieu of Taxes Agreement Between Franklin RE, LLC and the City of Franklin for the Property Located at 7220 Ballpark Drive, Franklin, Wisconsin 53132 (Tax Key No. 754-9007-000), in such form and content as annexed hereto, be and the same is hereby approved.

BE IT FURTHER RESOLVED, that the Mayor and the City Clerk be and the same are hereby authorized to execute and deliver the Payment in Lieu of Taxes Agreement.

BE IT FINALLY RESOLVED, that the City Clerk be and is hereby directed to obtain the recording of the Payment in Lieu of Taxes Agreement in the Office of the Register of Deeds for Milwaukee County, Wisconsin.

Introduced at a regular meeting of the Common Council of the City of Franklin this _____ day of _____, 2018.

Passed and adopted at a regular meeting of the Common Council of the City of Franklin this _____ day of _____, 2018.

RESOLUTION NO. 2018-____
Page 2

APPROVED:

ATTEST:

Stephen R. Olson, Mayor

Sandra L. Wesolowski, City Clerk

AYES _____ NOES _____ ABSENT _____

**PAYMENT IN LIEU OF TAXES AGREEMENT BETWEEN FRANKLIN RE, LLC
AND THE CITY OF FRANKLIN FOR THE PROPERTY LOCATED AT
7220 BALLPARK DRIVE, FRANKLIN, WISCONSIN 53132
(TAX KEY NO. 754 9007 000)**

This Agreement for payments in lieu of taxes ("PILOT Payments") is made and entered into by and between the City of Franklin, a municipal corporation organized and existing under and by virtue of the laws of the State of Wisconsin, with principal offices at 9229 West Loomis Road, Franklin, Wisconsin 53132 ("CITY") and Franklin RE, LLC, a Wisconsin limited liability company, with principal offices located at 1110 North Old World Third Street, Suite 610, Milwaukee, Wisconsin 53203 ("OWNER").

RECITALS

WHEREAS, OWNER is the owner of the real property legally described on Exhibit A attached hereto (the "PROPERTY"); and

WHEREAS, BPC Master Developer, LLC was the applicant for a proposed site plan as set forth in City of Franklin Plan Commission Resolution No. 2018-008, conditionally approving a Site Plan for a Senior Housing Development within the Planned Development District No. 37 (The Rock Sports Complex/Ballpark Commons) development use, and the CITY Plan Commission adopted Resolution No. 2018-008, on June 21, 2018, Condition 5. thereof providing: "BPC Master Developer, LLC and any owner of the Property, as a condition of approval of this Resolution, shall enter into an agreement with the City providing that in the event the land and/or building to be developed hereunder be exempt from general property taxation at any time, that such Property shall be subject to an annual payment in lieu of taxes to the City by the owner(s) of the Property in an amount that would be equal to the amount that would be levied as the annual City

general property tax upon the real and personal property were it not exempt from taxation. Such payments to the City shall be due and payable from time to time as and when general property taxes are due and payable. The agreement shall be prepared by the City Attorney and executed by the property owner, the Mayor and the City Clerk and shall be recorded in the Office of the Register of Deeds for Milwaukee County prior to the issuance of a Building Permit”; and

WHEREAS, this Agreement is that agreement required by Condition 5. of Resolution No. 2018-008; the Senior Living Housing Development (the “PROJECT”), together with the abutting real property, are legally the PROPERTY described in Exhibit A attached hereto; and

WHEREAS, OWNER recognizes that, notwithstanding the fact that the PROPERTY or portions thereof may in the future qualify for tax exempt status, valuable government services and benefits will be provided to it and the PROPERTY, which services and benefits directly or indirectly relate to the public health, safety, and welfare, and which include, but are not limited to: fire and police protection; paved streets and streetlights; snow removal; benefits associated with living in an organized community; and

WHEREAS, OWNER agrees for itself and its successors and assigns, in the event that the PROPERTY or a portion thereof is or becomes exempt from payment of property taxes, to make PILOT Payments to CITY in recognition of the services and benefits referred to herein; and

WHEREAS, it is the intent of this Agreement to have OWNER and all future owners of the PROPERTY, any parcel or building which is within the PROPERTY or any portion thereof, make payments in lieu of taxes, in the event that the PROPERTY or any portion

thereof is or becomes exempt from payment of property taxes, in order to assure the financial viability of the CITY in the provision of its aforesaid services and benefits; and

WHEREAS, under Wisconsin Statutes, including, but not limited to §§ 70.11(4a), (4b) or (4d), the PROPERTY may be or become exempt from the imposition of general property taxes, but will enjoy the same level of municipal services as provided for non-exempt multi-family residential properties in the CITY; and

WHEREAS, OWNER and the CITY have each determined that it is in their best interests to enter into this Agreement in connection with the application for and approval of Resolution No. 2018-008 to allow for the development of the aforesaid Senior Living Housing Development PROJECT; and

WHEREAS, as long as OWNER operates a tax-exempt multi-family residential facility and related activities at the PROPERTY, OWNER is willing to make PILOT Payments for the PROJECT and the PROPERTY in recognition of the municipal services the PROJECT and the PROPERTY will receive and benefit from on the terms set forth below.

NOW, THEREFORE, in consideration of mutual benefits, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. INCORPORATION OF RECITALS.

The parties hereby acknowledge that the above whereas clauses are part of this Agreement.

2. CITY SERVICES.

A. Services Typically Covered by Property Tax.

The CITY agrees to continue to furnish governmental services and benefits to the PROJECT and the PROPERTY of the same type, and to the extent, as are furnished from

time to time, without cost or charge (except by means of property tax and authorized fees and charges), to other similarly situated multi-family housing buildings and projects in the CITY. Nothing in this Agreement shall be construed to give OWNER or its successors and assigns a contractual right to specific governmental services, or to impose upon the CITY any additional duties, it being the parties' intent that the CITY provide public services to the PROJECT and the PROPERTY subject to the same terms and conditions as apply to properties owned by citizens or the public generally. Such services and benefits include, but are not limited by specific enumeration herein, those typically covered by the property tax such as fire and police protection, and on public streets, snow removal, and street lighting. The CITY shall not have breached its obligations hereunder if it is prevented from providing benefits and/or services to the PROJECT or the PROPERTY because of typical *force majeure* reasons (e.g. war, flood, fire, labor dispute, supply shortage, act of God, natural disaster, etc.), because of budgetary constraints, or because any person or entity shall assert a right which prevents delivery of such benefits and/or services.

B. Special Assessments, Special Charges and Fees.

Notwithstanding paragraph 2.A., or any future property tax exempt status of the PROPERTY, OWNER understands that the PROJECT and the PROPERTY will be subject to applicable special assessments, special charges, and special taxes as defined in Wis. Stat. § 74.01 (and as also referred to in Wis. Stat. Ch. 66) and fees charged by the CITY in the same manner that such special assessments, special charges, special taxes, and fees are charged for similar services and/or undertakings to multi-family housing buildings and PROPERTY within the CITY. This provision shall not affect the CITY's powers, consistent with the law, to determine the services and benefits (other than those typically covered by the

property tax) that shall be provided to the PROJECT and the PROPERTY and/or similarly situated property pursuant to this paragraph 2.B. Nothing contained herein shall preclude OWNER or its successors and assigns from appealing, as provided by law, the imposition of such special assessments, special charges, special taxes, or fees by the CITY.

3. PILOT PAYMENTS.

A. Calculations.

The parties have determined that the Property will be receiving benefits equal to the amount that would be levied as the annual general property tax upon the real and personal property were it not exempt from taxation. In recognition of those services and benefits covered by paragraph 2.A. of this Agreement, beginning in the year the PROPERTY or any portion thereof becomes exempt from property tax, and so long as the PROPERTY or any portion thereof continues to be exempt, in whole or in part, under Wis. Stat. § 70.11, or other statutory provision, OWNER or its successors and assigns shall pay the CITY an annual PILOT Payment for the PROPERTY or the portion thereof which is exempt for each calendar year; *provided, however*, that the foregoing shall not apply with respect to any portion of the PROPERTY that becomes exempt by virtue of a conveyance to the CITY. The method to be used in determining the PILOT, shall be the Value¹ for that tax year determined by CITY's Assessor times the Total Property Tax Rate² for the tax year.

B. Payment Due Date.

¹ "Value" herein means CITY Assessor's determination of the fair market value of the tax-exempt portion(s) of the PROPERTY on January 1 of each tax year.

² "Total Property Tax Rate" means the net rate for all taxes calculated to include all taxing bodies reflected on City of Franklin tax bills from time to time.

PILOT Payments for the year in which the PROPERTY or a portion thereof becomes exempt and subsequent years shall be due and payable: (i) in full on or before January 31 of the year following the calendar year for which the PILOT Payment was calculated; or (ii) if OWNER or its successor(s) or assign(s) elects to pay in installments, according to the following schedule for the year following the calendar year for which the PILOT Payment was calculated: the first installment shall be equal to 50% of the total amount, by January 31; the second installment shall be equal to 25% of the total amount, by March 31; and the third and final installment shall be equal to 25% of the total amount, by May 31. OWNER or its successor(s) or assign(s) shall be deemed to have elected to pay the PILOT Payment in installments by making the first full installment payment on or before January 31 in the respective year in which the PILOT Payment is due.

C. Use.

The CITY may use and expend PILOT Payments hereunder in such manner and for such purposes the CITY desires.

D. Mandatory Payment for Services to Offset PILOT Payment.

Notwithstanding anything herein to the contrary, if the State of Wisconsin enacts a mandatory payment for municipal services to be paid by owners of property exempt from general property tax or similarly situated owners of exempt property, PILOT Payments shall be reduced dollar for dollar by any such mandatory payment paid by OWNER or its successors or assigns to the CITY.

4. EXEMPT STATUS.

Nothing in this Agreement shall be construed as granting tax-exempt status

on the OWNER or the PROPERTY. If OWNER qualifies for tax-exempt status under Wisconsin law, it is the OWNER's obligation to apply for tax-exempt status. At such time that OWNER is granted tax exempt status pursuant to Wis. Stat. § 70.11, or other statutory provision, OWNER shall then make PILOT Payments pursuant to this Agreement. No PILOT Payment under this Agreement is due from OWNER until such time that the PROPERTY is deemed to be exempt from payment of property taxes pursuant to Wis. Stat. § 70.11, or other statutory provision.

The CITY Assessor's Office may review the PROPERTY's exempt status under Wis. Stat. § 70.11, or other applicable statutory provision from time to time with the respective January 1 dates being the reference dates for those exemption reviews. If the CITY, as a result of those reviews or otherwise, determines that all or any portion of the PROPERTY no longer qualifies (or does not qualify) for exemption from property tax: (i) the CITY will provide notice of such determination to OWNER or its successor(s) or assign(s); (ii) this Agreement shall be suspended with respect to any years and, if applicable, with respect to any portions of the PROPERTY for which exemption no longer applies; (iii) if PILOT Payments have been erroneously made for such tax years, CITY shall promptly refund such PILOT Payments, or, at the option of the CITY, offset such PILOT Payments against any property taxes due, or to become due, from OWNER or its successor(s) or assign(s), in which case the CITY will treat such offset as having been made under protest; and (iv) the PROPERTY, or any portion thereof which does not qualify for exemption, shall be placed on the property tax rolls for all years for which whole or partial exemption has been determined not to apply. If OWNER or its successor(s) or assign(s) disagree with the CITY's determination that the PROPERTY or any part thereof no longer qualifies for tax

exemption, OWNER or its successor(s) or assign(s) may challenge such determination by following the procedure set forth in Wis. Stat. § 74.35 or as otherwise provided by law.

Notwithstanding anything to the contrary contained herein, OWNER acknowledges that it is or may be bound by the reporting requirement, in the Wis. Stat. § 70.11 preamble, and that under Wis. Stat. § 70.109: exemptions are strictly construed; it is presumed that property is taxable; and the burden is on the person claiming exemption.

OWNER, on its behalf and that of its successors and assigns, also acknowledges that if it leases, or otherwise allows another person to use and/or occupy, all or a portion of the PROPERTY, such use may affect the PROPERTY's exempt status. See, e.g. the preamble of Wis. Stat. § 70.11, Wis. Stat. § 70.1105, and *Deutsches Land, Inc. v. City of Glendale*, 225 Wis. 2d 70, 591 N.W.2d 583 (1999). For example, if OWNER is exempt but only uses and occupies 90% of the PROPERTY for exempt purposes and leases the other 10% of the PROPERTY to a for-profit, nonexempt entity, and if the assessor applies a square footage, taxed in part analysis, the PROPERTY is to be taxed on a 10% basis and exempt on a 90% basis and the PILOT Payment would have to be paid on the 90% portion.

5. SUCCESSORS AND ASSIGNS.

All of the terms and conditions of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

6. TERM.

This Agreement shall remain in effect in perpetuity absent the occurrence of any of the following potential termination condition(s) event(s). This Agreement shall terminate effective on the December 31 of the year immediately prior to the year during

which the CITY Assessor concludes that as of or prior to the determination date any of the following events has occurred:

- a. The CITY determines that the PROPERTY no longer supports/provides for the PROJECT/Senior Living Housing Development use and with such change of use no longer potentially qualifies for property tax exemption;
- b. Enactment by the State of Wisconsin of a mandatory payment for municipal services by owners of property exempt from the general property tax or similarly situated owners of exempt property; and/or
- c. Repeal by the State of Wisconsin of the property tax exemption for the PROPERTY and other similarly situated property.

7. AMENDMENT.

The CITY and OWNER expressly reserve the right to modify and amend this Agreement from time to time as they shall mutually agree in writing executed by the parties.

8. SEVERABILITY; GOVERNING LAW.

If any provision hereof is duly held by a court of competent jurisdiction to be invalid with respect to any circumstance or otherwise, the remainder of this Agreement and/or the application of the Agreement to any other circumstance, shall not be affected thereby. The parties intend that the laws of the State of Wisconsin and ordinances and regulations of the City of Franklin shall be the governing law with respect to this Agreement.

9. AUTHORITY.

OWNER represents and warrants to the CITY that its officers executing

this Agreement have been duly authorized to execute and to cause OWNER to enter this Agreement. The CITY represents and warrants to OWNER that the undersigned CITY officials are duly authorized to execute and to enter into this Agreement.

10. RECORDING.

The CITY shall cause this Agreement or a memorandum of this Agreement to be recorded with the Milwaukee County Register of Deeds and deliver a copy of the recorded Agreement to OWNER.

IN WITNESS WHEREOF, the parties have executed this Agreement this _____ day of _____, 2018.

FRANKLIN RE, LLC

By: _____
James R. Kleinfeldt, Manager

By: _____
Chris Buday, Project Manager / Agent

STATE OF _____)
) SS.
_____ COUNTY)

Personally came before me on this _____ day of _____, 2010, the above named James R. Kleinfeldt, Manager and Chris Buday, Project Manager / Agent, known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed said instrument for the purposes and considerations therein expressed as authorized by their respective officer position titles and with the authority of Franklin RE, LLC.

Notary Public, _____ County, _____
My commission expires: _____
Dated this _____ day of _____, 2018.

CITY OF FRANKLIN

By: Stephen R. Olson, Mayor

By: Sandra L. Wesolowski, City Clerk

STATE OF WISCONSIN)
) SS.
MILWAUKEE COUNTY)

Personally came before me this _____ day of _____, 2018, Stephen R. Olson, Mayor and Sandra L. Wesolowski, City Clerk, of the above named municipal corporation, City of Franklin, to me known to be the persons who executed the foregoing instrument and to me known to be such Mayor and City Clerk of said municipal corporation, and acknowledged that they executed the foregoing instrument, as such officers, by their authority, pursuant to a motion adopted by the City of Franklin Plan Commission on the 21st day of June, 2018.

Notary Public, Milwaukee County, WI
My commission expires: _____
Dated this _____ day of _____, 2018.

This Agreement was drafted by
Jesse A. Wesolowski
City Attorney
City of Franklin

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EXHIBIT A

Legal Description

Lot 2 of Certified Survey Map No. 9078, recorded in the Office of the Register of Deeds for Milwaukee County, Wisconsin on October 16, 2018, as Document No. 10820171, being a redivision of Lots 3 and 4 of Certified Survey Map 9042 and lands in the Northwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ and the Northeast $\frac{1}{4}$ and Southeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 9, Town 5 North, Range 21 East. Said land being in the City of Franklin, Milwaukee County, State of Wisconsin.

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APPROVAL <i>Slw</i>	REQUEST FOR COUNCIL ACTION	MEETING DATE November 5, 2018
REPORTS AND RECOMMENDATIONS	A Resolution Authorizing Certain Officials to Execute a First Amendment to Tax Incremental District No. 5 Development Agreement Between the City of Franklin and BPC Master Developer, LLC (Developer) (Ballpark Commons)	ITEM NUMBER <i>G.3.</i>

Attached is a copy of the above resolution and the First Amendment to Tax Incremental District No. 5 Development Agreement. The agreement focuses on the ability of the City to partially release its mortgage on the Ballpark Commons property/properties and allows the Senior Housing Development project of the Ballpark Commons development to move forward, as discussed in the next succeeding partial release of City mortgage item on this meeting agenda. Staff will be present at the meeting to provide information regarding this subject as may be requested by the Common Council.

COUNCIL ACTION REQUESTED

A motion to adopt A Resolution Authorizing Certain Officials to Execute a First Amendment to Tax Incremental District No. 5 Development Agreement Between the City of Franklin and BPC Master Developer, LLC (Developer) (Ballpark Commons).

Legal Services Dept.: jw

STATE OF WISCONSIN

CITY OF FRANKLIN

MILWAUKEE COUNTY

RESOLUTION NO. 2018-____

A RESOLUTION AUTHORIZING CERTAIN OFFICIALS TO EXECUTE A FIRST
AMENDMENT TO TAX INCREMENTAL DISTRICT NO. 5 DEVELOPMENT
AGREEMENT BETWEEN THE CITY OF FRANKLIN AND BPC MASTER
DEVELOPER, LLC (DEVELOPER)
(BALLPARK COMMONS)

WHEREAS, the Senior Housing Development property of the Ballpark Commons Development project is in the process of a sale and purchase transaction and the ultimate financing thereof to proceed and provide for the Senior Housing Development; and

WHEREAS, it is necessary to amend the Tax Incremental District No. 5 Development Agreement Between the City of Franklin and BPC Master Developer, LLC (Developer) to allow for the partial release of the City mortgage upon Ballpark Commons property/properties, including the property being sold to the developer of the Senior Housing Development project component, to allow for its financing; and

WHEREAS, the Common Council having considered the release of the City mortgage from the subject portion of the Ballpark Commons development property and having determined it will assist in the overall development and the Senior Housing Development moving forward for the benefit of the community and the interest of the public, and the Common Council having received the recommendation from City Staff and its financial and legal counsel consultants for approval of an amendment to the development agreement to allow for the partial release of the City mortgage, accordingly.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Common Council of the City of Franklin, Wisconsin, that the First Amendment to Tax Incremental District No. 5 Development Agreement Between the City of Franklin and BPC Master Developer, LLC (Developer) (Ballpark Commons), in such form and content as annexed hereto, be and the same is hereby approved.

BE IT FURTHER RESOLVED, that the Mayor, the Director of Finance and Treasurer and the City Clerk be and the same are hereby authorized to execute and deliver the First Amendment to Tax Incremental District No. 5 Development Agreement.

BE IT FINALLY RESOLVED, that the City Clerk be and is hereby directed to obtain the recording of the First Amendment to Tax Incremental District No. 5 Development Agreement in the Office of the Register of Deeds for Milwaukee County, Wisconsin.

Introduced at a regular meeting of the Common Council of the City of Franklin this
____ day of _____, 2018.

RESOLUTION NO. 2018-_____

Page 2

Passed and adopted at a regular meeting of the Common Council of the City of Franklin this _____ day of _____, 2018.

APPROVED:

ATTEST:

Stephen R. Olson, Mayor

Sandra L. Wesolowski, City Clerk

AYES _____ NOES _____ ABSENT _____

FIRST AMENDMENT TO
TAX INCREMENTAL DISTRICT NO. 5
DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF FRANKLIN AND
BPC MASTER DEVELOPER, LLC (Developer)

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (this "Amendment") is made and entered into as of the ____ day of October, 2018 by and between BPC MASTER DEVELOPER, LLC, a Wisconsin limited liability company ("Developer"), and CITY OF FRANKLIN, WISCONSIN, a Wisconsin municipal corporation ("City").

RECITALS:

B. The Developer and the City have entered into that certain Tax Incremental District No. 5 Development Agreement dated February 19, 2018 (the "Agreement"), whereby the Developer agreed to create new assessed value of approximately \$130 million as a result of the construction of a mixed-use development consisting of a stadium, sports village, restaurants, apartments, apartments, retail buildings, a hotel and offices (the "Project");

C. In accordance with Subsection I.F. of the Agreement, to secure Developer's monetary obligations contained in the Agreement, the Developer executed that certain mortgage dated February 17, 2018, recorded on March 5, 2018, in the Office of the Register of Deeds for Milwaukee County, Wisconsin, as Document No. 10756660 (the "City Mortgage") with respect to certain real property as more particularly described in **Exhibit A** attached hereto (the "Property");

D. Subsection I.F. and Subsection II.B.1.(b) of the Agreement provide that the City Mortgage shall be released at such time as the City receives satisfactory evidence from Developer of (i) a binding construction or other loan commitment, and (ii) sufficient equity, or binding equity commitments ("Funding Commitments") to construct \$40 million of private improvements ("Initial Improvements");

E. The Developer wishes to commence construction of the Initial Improvements on a portion of the Property, as more particularly described on **Exhibit B** attached hereto ("Improvements Parcel"), using Developer funds prior to delivery of the Funding Commitments to the City;

F. The City finds that permitting the Developer to commence construction of the Initial Improvements will allow the Project to proceed in a timely manner, which is in the vital and best interests of the City and its residents.

G. The City and Developer desire to amend the Agreement to, among other things, permit the construction of the Initial Improvements and to partially release the City Mortgage with respect to the Improvements Parcel, as hereinafter set forth.

AGREEMENT

NOW, THEREFORE, in consideration of the agreements hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Developer and City agree as follows:

1. **Recitals.** The foregoing recitals are incorporated herein by reference. All capitalized terms used herein and not expressly defined shall have the meaning given to them in the Agreement.

2. **Partial Release of City Mortgage.** In consideration of Developer's commitment to commence construction of the Initial Improvements on or before January 1, 2019, the City hereby agrees to partially release the City Mortgage with respect to the Improvements Parcel. Notwithstanding anything contained herein, the City and Developer acknowledge and agree that the City retains a subordinate mortgage position on the balance of the Property as further provided in the City Mortgage.

3. **Schedule of Increment and Debt Service.** In accordance with Subsection II.E., "Exhibit C" to the Agreement, is hereby deleted and replaced with the revised schedule of increment and debt service as more particularly described on Exhibit C attached hereto. Notwithstanding the foregoing, the Developer and City acknowledge and agree that Exhibit C may be further revised by the City to reflect the actual schedule of increment and debt service.

4. **Controlling Agreement.** To the extent any provisions contained herein conflict with the Agreement, the provisions contained herein shall supersede such conflicting provisions contained in the Agreement. Except as modified herein, the Developer and City hereby represent and warrant that the Agreement remains in full force and effect and is hereby reaffirmed and ratified by both the Developer and City. Furthermore, Developer and City agree that the City shall not be required to release the balance of the City Mortgage until such time as the Developer complies with the requirements contained in Subsection I.F. and Subsection II.B.1.(b) of the Agreement.

5. **Counterparts, E-mail.** This Amendment may be executed in counterparts. Each executed counterpart of this Amendment will constitute an original document, and all executed counterparts, together, will constitute the same agreement. Any counterpart evidencing signature by one party that is delivered by e-mail or telecopy by such party to the other party hereto shall be binding on the sending party when such e-mail or telecopy is sent.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Amendment effective the day and year first set forth above.

DEVELOPER:

BPC Master Developer, LLC

By: BPC Master Developer Manager, LLC,
Its Manager

By: _____
Michael E. Zimmerman, Manager

Date: _____

STATE OF WISCONSIN)
)ss.
MILWAUKEE COUNTY)

Personally appeared before me this ____ day of _____, 2018, the above-named Michael E. Zimmerman, the Manager of BPC Master Developer Manager, LLC, the Manager of BPC Master Developer, LLC, to me known to be the persons who executed the foregoing amendment both individually and on behalf of the BPC Master Developer, LLC and by its authority.

Notary Public State of Wisconsin
My commission expires: _____

[Signature page to Amendment]

CITY:
City of Franklin, Wisconsin

By: _____
Stephen R. Olson, Mayor

By: _____
Paul Rotzenberg, Director of Finance
and Treasurer

Attest: _____
Sandra L. Wesolowski, City Clerk

STATE OF WISCONSIN)
)ss.
MILWAUKEE COUNTY)

Personally appeared before me this ____ day of _____, 2018, the
above-named Stephen R. Olson, Paul Rotzenberg and Sandra L. Wesolowski, Mayor, Director of
Finance and Treasurer, and City Clerk, respectively, of the City of Franklin, Wisconsin, to me
known to be the persons who executed the foregoing amendment on behalf of the City and by its
authority.

Notary Public State of Wisconsin
My commission expires: _____

Approved as to form:

Jesse A. Wesolowski, City Attorney

This instrument was drafted by:
Ethan B. Schwenker, Esq. and Jesse A. Wesolowski, Esq.

[Signature page to Amendment]

Exhibit A
Property Legal Description

Parcel 1:

A tract of land in the Northwest 1/4 of Section 9, Township 5 North, Range 21 East, in the City of Franklin, County of Milwaukee, State of Wisconsin, bounded and described as follows: commence at the North 1/4 of said Section; thence South 0 deg. 14'24" East, along the East line of said 1/4 Section, 75.00 feet to the point of beginning; thence South 88 deg. 31'36" West for a distance of 660.75 feet, along the South line of West Rawson Avenue to a point; thence South 0 deg. 16'24" East for a distance of 749.00 feet to a point; thence North 88 deg. 31'36" East for a distance of 660.20 feet to a point; thence North 0 deg. 13'52" West for a distance of 749.01 feet to the point of beginning.

Parcel 2:

A tract of land in the Northwest 1/4 of Section 9, Township 5 North, Range 21 East, in the City of Franklin, County of Milwaukee, State of Wisconsin, bounded and described as follows: commencing at the North 1/4 corner of said Section thence South 00 deg. 14'24" East, along the East line of said 1/4 Section, 823.83 feet to the point of beginning; thence South 88 deg. 31'36" West for a distance of 660.20 feet to a point; thence South 0 deg. 16'24" East for a distance of 1474.75 feet to the North line of relocated State Highway 36; thence North 30 deg. 15'50" East for a distance of 977.50 feet, along said North line to a point of curve; thence along a curve to the right having a radius of 3919.72 feet and an arc length of 295.77 feet, being subtended by a chord of North 33 deg. 12'0" East for a distance of 295.70 feet, along said North line to a point on a curve; thence North 0 deg. 13'52" West for a distance of 400.00 feet to the point of beginning.

Parcel 3: That part of the West 1/4 of the Northeast 1/4 of Section 9, Township 5 North, Range 21 East, in the City of Franklin, County of Milwaukee, State of Wisconsin, which is bounded and described as follows: Commencing at the Northwest corner of said 1/4 Section; thence South 00° 08' 17" West along the West line of said 1/4 Section, 75.01 feet to a point in the South line of West Rawson Avenue which is the Point of Beginning of the land to be described; thence North 89° 08' 18" East along the South line of said West Rawson Avenue, 458.24 feet to a point on the West line of West Loomis Road (State Trunk Highway 36); thence South 00° 51' 42" East along the West line of said Loomis Road, 437.54 feet to a point; thence North 87° 34' 40" West, 466.17 feet to a point in the West line of said 1/4 Section; thence North 00° 08' 17" East along the West line of said 1/4 Section, 410.90 feet to the point of beginning.

Parcel 4: That part of the West 1/2 of the North East 1/4 of Section 9, in Township 5 North, Range 21 East, in the City of Franklin, County of Milwaukee and State of Wisconsin, which is bounded and described as follows: Commencing at a point in the West line of said 1/4 Section, which is 485.91 feet South 00° 08' 17" West of the North West corner of said 1/4 Section; continuing thence South 00° 08' 17" West along the West line of said 1/4 Section, 213.45 feet to a point; thence South 53° 19' 45" East, 325.57 feet to a point in the Northwesterly line of Old Loomis Road; thence North 36° 40' 15" East along the Northwesterly line of said Old Loomis Road, 235.81 feet to a point of curve; thence Northeasterly 212.96 feet along the arc of a curve, whose center lies to the West, whose radius is 325.10 feet and whose chord bears North 17° 54' 17" East, 209.17 feet to a point; thence North 87° 34' 40" West, 466.17 feet to the point of commencement.

Parcel 5: That part of the Northeast 1/4 of Section 9, in Township 5 North, Range 21 East, in the Town of Franklin, Milwaukee County, Wisconsin, bounded and described as follows: Commencing at a point on the West line of the Northeast 1/4 of Section 9 aforesaid with the center line of West Loomis Road, thence Northeasterly along the center line of West Loomis Road, 490 feet to a point; thence Northwesterly at right angles to the center line of West Loomis Road 357.74 feet to a point in the West line of the Northeast 1/4 of Section 9 aforesaid; and thence South along the West line of the Northeast 1/4 of Section 9 aforesaid

606.69 feet to the place of commencement.

For informational purposes only

Property Address: Situated on West Old Loomis Road, Franklin, WI 53132

Tax Key No.: 754-9988-001 (Parcel 1), 754-9988-002 (Parcel 2), 755-9995-002 (Parcel 3), 755-9995-001 (Parcel 4), 755-9996-000 (Parcel 5)

Exhibit B

Improvements Parcel Legal Description

Lot 2 of Certified Survey Map No. 9078 recorded in the office of the Register of Deeds for Milwaukee County, Wisconsin, on October 16, 2018 as Document No. 10820171, being part of Lot 3 and 4 of Certified Survey Map No. 9042 and the Northwest 1/4 of the Northeast 1/4 and the Northeast 1/4 and Southeast 1/4 of the Northwest 1/4 of Section 9, Town 5 North, Range 21 East. Said land being in the City of Franklin, County of Milwaukee, State of Wisconsin.

Tax Key Numbers: A Part of 754-9004-000 and 754-9003-000 and a vacated part of Loomis Road (no tax key number)

Exhibit C

Annual Increments and Debt Service

[TO BE ATTACHED]

Shirley Roberts

From: Jesse Wesolowski [jweslaw@aol.com]
Sent: Friday, November 02, 2018 12:52 PM
To: Sandi Wesolowski; Shirley Roberts; Aimee Schlueter
Cc: Steve Olson; cberg@foley.com; bkeyes@foley.com; mimpola@foley.com; Glen Morrow; Sara Arnold; Calli Berg; Joel Dietl; Paul Rotzenberg; Mark Luberd
Subject: Ballpark Commons First Amendment to Dev. Agmt. 11/5/18 Council mtg. agenda item
Attachments: T5 BC First Amndmt. Dev. Agmt. COUNCIL ACTION SHEET 11-2-18.doc; T5 BC First Amndmt. Dev. Agmt. reso for 11518 CC mtg. 11-2-18.doc; T5 BC First Amendment to TIF Development Agreement (10.24.2018)Q&B 11218.doc

See attached action sheet, resolution and First Amendment to T5 Dev. Agmt. For inclusion in the Council mtg. Agenda packet in that order. This item should immediately precede the partial satisfaction of mortgage item previously sent.

By copy to involved Attys.: note that there has been some email correspondence regarding some minor changes to the text of the amendment; we should get those discussions and any changes done at least by the end of Monday afternoon (I did add the City Treasurer's signature line to the attached).

FYI: Only have one my item: the Senior housing property PILOT agmt. Thanks.

Jesse A. Wesolowski

Jesse A. Wesolowski
Wesolowski, Reidenbach & Sajdak, S.C.
11402 West Church Street
Franklin, Wisconsin 53132
Phone: (414) 529-8900
Facsimile: (414) 529-2121
Email: JWesLaw@aol.com

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